11–6–98
Vol. 63 No. 215
Pages 59875–60202

Federal Register

Friday
November 6, 1998

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

Rules and Regulations

Federal Register
Vol. 63, No. 215
Friday, November 6, 1998

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 317 and 335

RIN 3206–AH92

Employment in the Senior Executive Service Promotion and Internal Placement

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations that adopt without change interim regulations that corrected previous regulations which were inconsistent with statutory provisions that govern the 120-day moratorium on involuntary reassignments of career Senior Executive Service (SES) appointees following the appointment of a new agency head or a new noncareer immediate supervisor. These regulations also authorize agencies to reinstate SES career appointees who have competitive service reinstatement eligibility to career appointments in competitive service positions for which they qualify, including Senior Level (SL) positions.

EFFECTIVE DATE: December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Bede Bender (202) 606–1784.

SUPPLEMENTARY INFORMATION:

120-Day Moratorium on Involuntary Reassignments

On June 24, 1998, the Office of Personnel Management (OPM) published interim regulations (63 FR 34257) to correct existing regulations that were inconsistent with statutory provisions governing the 120-day moratorium on involuntary reassignments of Senior Executive Service (SES) career appointees. The law in 5 U.S.C. 3395(e)(1) provides for a 120-day moratorium on involuntary reassignments of SES career appointees following the appointment of a new agency head or the career appointee's most immediate supervisor who is a noncareer appointee and who has the authority to make an initial appraisal of the career appointee's performance. The law also provides in § 3395(e)(2) for an exception to the moratorium by permitting involuntary reassignments during the 120-day period when the reassignment results from a final unsatisfactory performance rating issued prior to the appointment that triggered the moratorium. In situations which meet this criterion for exception, it does not matter if a new agency head or noncareer supervisor (with authority to make an initial performance appraisal) is appointed subsequently, i.e., after issuance of a final unsatisfactory performance rating, nor does it matter if there has been a change in the agency official responsible for taking the reassignment action (the language of the current regulation). The reassignment action may proceed if the conditions for the exception are met.

In instances where there is a change in agency head, it is possible that career appointees will be subject to more than one moratorium—which almost certainly will not run concurrently but may overlap to some degree, i.e., the appointment of a new agency head often results in some turnover among noncareer appointees. When applying the regulation in these instances, it is important to look at the starting date of each moratorium independently, in relation to the date on which the unsatisfactory rating was issued. For example, if a final rating of unsatisfactory is issued after the appointment of a new agency head, the moratorium initiated by that appointment must be allowed to run its course before any involuntary reassignment action can be effected. If a new noncareer supervisor is appointed after the new agency head, and also after the issuance of the unsatisfactory rating (i.e., when the rating is issued between the appointment of the new agency head and the new noncareer supervisor), then the second moratorium (i.e., the moratorium triggered by the appointment of the new noncareer supervisor) does not apply to an involuntary reassignment resulting from the unsatisfactory rating.

Conversion From Career SES to Career SL Appointment

The interim regulations published on June 24, 1998, also expanded the eligibility of SES career appointees for reinstatement to Senior Level (SL) positions. SL positions established under 5 CFR Part 319 are in the competitive service and are covered by OPM regulations governing the competitive service generally. Formerly, under 5 CFR 335.103(c)(1)(vi), agencies were required to follow competitive procedures in agency merit promotion plans in order to reinstate a person to a permanent or a temporary position at a higher grade or with more promotion potential than a position previously held on a permanent basis in the competitive service. This meant that career SES members could be reinstated to competitive service positions only at the same grade or pay level as the highest position they held previously in the competitive service.

By law, SES and SL positions are above the GS–15 level. In nearly all cases, career SES appointees have already competed at least Governmentwide. This regulatory change recognized that fact by permitting reinstatement of career SES appointees to competitive service positions above the GS–15 level.

The 30-day comment period expired on August 24, 1998. OPM did not receive any comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 317 and 335

Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, under the authority in 5 U.S.C. 3392, 3393, 3393a, 3395, 3397, 3593, and 3595, the interim regulations

amending 5 CFR Parts 317 and 335 (63 FR 34257) published on June 24, 1998, are adopted as final without any changes.

[FR Doc. 98–29768 Filed 11–5–98; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1499

RIN 0551–AA57

Foreign Donation of Agricultural Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: Commodity Credit Corporation (CCC) is issuing its final rule with respect to amendments to the regulations governing procedures for procuring ocean transportation for agricultural commodities provided under section 416(b) of the Agricultural Act of 1949 and the Food for Progress Act of 1985, published as an interim final rule in the **Federal Register** on February 23, 1998.

EFFECTIVE DATE: November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Ira D. Branson, Director, Commodity Credit Corporation, Program Support Division, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Avenue, S.W., Stop 1031; Washington, D.C. 20250–1031; telephone (202) 720–3573.

SUPPLEMENTARY INFORMATION: This final rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this final rule:

(1) Will have an annual effect on the economy of less than $100 million;

(2) Will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Will not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

Paperwork Reduction Act

This final rule does not contain any information collection requirements that require OMB approval under the provisions of the Paperwork Reduction Act.

Executive Order 12372

This final rule is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 46 FR 29115 (June 24, 1983).

Executive Order 12988

This final rule has been reviewed under the Executive Order 12988, Civil Justice Reform. The final rule will have pre-emptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The final rule will not have retroactive effect. Administrative proceedings are not required before parties may seek judicial review.

On February 23, 1998, CCC published an interim final rule to amend the regulations applicable to donations under section 416(b) of the Agricultural Act of 1949, and the Food for Progress Program to be consistent with the new title I, Pub. L. 480 requirements. In particular, the final interim rule deleted the prohibition in § 1499.8(b)(4) against ''clarification or submission of additional information'' under competitive freight invitations for bids and updated a cross reference to the title I, Pub. L. 480 regulations regarding information and certifications required from prospective shipping agents. CCC did not receive any comments regarding the interim final rule.

List of Subjects in 7 CFR part 1499

Agricultural commodities, Exports, Foreign aid.

Accordingly, the interim rule amending 7 CFR part 1499 which was published at 63 FR 8837 on February 23, 1998, is adopted as a final rule without change.

Christopher E. Goldthwait,

General Sales Manager, FAS, and Vice President, Commodity Credit Corporation.

[FR Doc. 98–29726 Filed 11–5–98; 8:45 am]
BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1499

RIN 0551–AA56

Foreign Donation of Agricultural Commodities

AGENCY: Commodity Credit Corporation, USDA

ACTION: Final rule.

SUMMARY: This rule amends Commodity Credit Corporation (CCC) regulations governing foreign donations of agricultural commodities. This rule contains changes, corrections and clarifications to the regulations to achieve more effective management of foreign donations of agricultural commodities.

EFFECTIVE DATE: November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Ira D Branson, Director, Commodity Credit Corporation Program Support Division, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Ave., S.W., Stop 1031; Washington, D.C. 20250–1031; telephone (202) 720–3573.

SUPPLEMENTARY INFORMATION: This rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this rule:

(1) Will have an annual effect on the economy of less than $100 million;

(2) Will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Will not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

Paperwork Reduction Act

The information collection requirements imposed by this rule has been previously submitted to the Office of Management and Budget (OMB) under the paperwork Reduction Act of 19980 (44 U.S.C. Chapter 35). OMB has assigned control number 0551–0035 for this information collection. This final rule change does not require collection of additional information; however, the final rule includes a requirement to use new forms for the semiannual logistic and monetization reports. These report forms have been submitted to OMB for review.

Executive Order 12372

This rule is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR Part 3015, subpart V, published at 46 FR 29115 (June 24, 1983).

Executive Order 12988

This rule has been reviewed under the Executive Order 12988, Civil Justice Reform. The rule will have pre-emptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The rule will not have retroactive effect. Administrative proceedings are not required before parties may seek judicial review.

Background

On February 23, 1998, CCC published a notice of proposed rulemaking 63 FR 8879, regarding the donation of agricultural commodities under section 416(b) of the Agricultural Act of 1949 and the Food for Progress Act of 1985 appear at 7 CFR Part 1499. That notice proposed changes to address certain issues that have arisen since the regulations were first published on November 29, 1996, and additionally, make non-substantive corrections. CCC did not receive any comments on the proposed rule and is adopting the proposed rule without change.

List of Subjects in 7 CFR Part 1499

Agricultural commodities, Exports, Foreign aid.

Accordingly, Part 1499 of Title 7 of the Code of Federal Regulations is amended as follows:

PART 1499—FOREIGN DONATION PROGRAMS

1. The authority citation for Part 1499 continues to read as follows:

Authority: 7 U.S.C. 1431 (b); 7 U.S.C. 17360; E.O. 12752

§ 1499.1 [Amended]

2. Section 1499.1 is amended by removing—KCFMO—Kansas City Financial Management Office'' and adding, in its place, ''KCMO/DMD—Kansas City Management Office/Debt Management Division.''

3. Section 1499.7(e) is amended by revising the third and fourth sentences to read as follows:

§ 1499.7 Apportionment of costs and advances.

* * * * *

(e) * * * The non-government Cooperating Sponsor may make adjustments between line items of an approved Program Operations Budget up to 20 percent of the total amount approved or $5,000, whichever is less without any further approval. Adjustments beyond these limits must be specifically approved by the Director, PDD.

* * * * *

§ 1499.7 [Amended]

4. Section 1499.7 (i) is amended by deleting ''Director, CCCPSD'' and adding in its place , ''Director, PDD.''

5. In section 1499.8, the introductory text of paragraph (b) and the headings of paragraph (g) and (g)(1) are revised, paragraph (g)(1)(vii) is redesignated as paragraph (g)(viii), and new paragraph (g)(1)(vii) and (g)(1)(ix) are added to read as follows:

§ 1499.8 Ocean transportation.

* * * * *

(b) *Freight procurement requirements.* When CCC is financing any portion of the ocean freight, whether on U.S.-flag or non-U.S. flag vessels, and the Cooperating Sponsor arranges ocean transportation:

* * * * *

(g) Documents required for payment of freight—(1) General rule. * * *

* * * * *

(vii) For all liner cargoes, a copy of the tariff page.

* * * * *

(ix) Each request to CCC for payment must provide a document, on letterhead and signed by an official or agent of the requester, the name of the entity to receive payment, the bank ABA number to which payment is to be made; the account number for the deposit at the bank; the requester's taxpayer identification number; and the type of the account into which funds will be deposited.

* * * * *

§ 1499.8 [Amended]

6. In section 1499.8, paragraph (g) is amended by deleting ''One copy'' wherever it appears and adding ''One signed copy'' in its place, and paragraph (g)(vi) is amended by deleting ''a notice'' and adding, in its place, ''a signed notice.''

7. Section 1499.10 is amended by adding a new paragraph (d) to read as follows:

§ 1499.10 Restrictions on commodity use and distribution.

* * * * *

(d) In the event that its participation in the program terminates, the non-government cooperating sponsor will safeguard any undistributed commodities and sales proceeds and dispose of such commodities and proceeds as directed by CCC.

§ 1499.14 [Amended]

8. Section 1499.14(b)(2) is amended by deleting ''KCFMO'' and adding, in its place ''KCMO/DMD.''

9. Section 1499.15, is amended by removing ''KCFMO'' wherever it appears and adding, in its place ''KCMO/DMD'', revising the last sentence of paragraphs § 1499.15(d)(2) and (f)(3) and adding paragraphs (d)(2)(i) through (d)(2)(vi) to read as follows:

§ 1499.15 Liability for loss, damage, or improper distribution of commodities—claims and procedures.

* * * * *

(d) * * *

(2) * * * In the event of a declaration General Average:

(i) The Cooperating Sponsor shall assign all claim rights to CCC and shall provide CCC all documentation relating to the claim, if applicable;

(ii) CCC will be responsible for settling general average and marine salvage claims;

(iii) CCC has sole authority to authorize any disposition of commodities which have not commenced ocean transit or of which the ocean transit is interrupted;

(iv) CCC will receive and retain any monetary proceeds resulting from such disposition;

(v) CCC will initiate, prosecute, and retain all proceeds of cargo loss and

damage against ocean carriers and any allowance in general average; and

(vi) CCC will pay any general average or marine salvage claims determined to be due.

* * * * *

(f) * * *

(3) * * * If the Agricultural Counselor or Attache approves a Cooperating Sponsor's decision not to take further action on the claim, the Cooperating Sponsor shall assign the claim to CCC and shall forward all documentation relating to the claim to KCMO/DMD.

* * * * *

10. In section 1499.16, the second and third sentences of paragraph (c)(1) introductory text and the second and third sentences of paragaph (c)(2) introductory text are revised to read as follows:

§ 1499.16 Records and reporting requirements.

* * * * *

(c) *Reports.* (1) * * * Cooperating sponsors must submit reports on Form CCC–620 and submit the first report by May 16 for agreements signed during the period, October 1 through March 31, or by November 16 for agreements signed during the period, April 1 through September 30. The first report must cover the time period from the date of signing and subsequent reports must be provided at six months intervals covering the period from the due date of the last report until all commodities have been distributed or sold and such distribution or sale reported to CCC. * * *

* * * * *

(2) * * * Cooperating Sponsors must submit reports on Form CCC–621 and submit the first report by May 16 for agreements signed during the period, October 1 through March 31, or by November 16 for agreements signed during the period, April 1 through September 30. The first report must cover the time period from the date of signing and subsequent reports must be provided at six months intervals covering the period from the due date of the last report until all funds generated from commodity sales have been distributed and such distribution reported to CCC.* * *

* * * * *

Christopher E. Goldthwait,

General Sales Manager, FAS, and Vice President, Commodity Credit Corporation.

[FR Doc. 98–29725 Filed 11–5–98; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AWA–1]

RIN 2120–AA66

Modification of Phoenix Class B Airspace Area, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on October 30, 1998 (Airspace Docket 94–AWA–1). In that rule, the legal description inadvertently contained an error in the longitudinal coordinates in Area D. This action corrects that error.

EFFECTIVE DATE: November 6, 1998.

FOR FURTHER INFORMATION CONTACT: William C. Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: **Federal Register** Document 98–29148, Airspace Docket No. 94–AWA–1, published on October 30, 1998 (63 FR 58291), modified the Phoenix Class B airspace area. However, the legal description for Area D of the Phoenix Class B airspace area inadvertently contained an error in the longitudinal coordinates. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the Phoenix Class B airspace area, published in the **Federal Register** on October 30, 1998 (63 FR 58296); **Federal Register** Document 98–29148, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

On page 58296, in the third column, paragraph Area D, lines 12 and 13, correct the longitudinal coordinates for Valley Road to read: ''(Lat. 33°13′10″ N., long. 112°09′58″ W.),''

Issued in Washington, DC, on November 2, 1998.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–29778 Filed 11–5–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29381; Amdt. No. 1899]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420),

Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include ''or GPS or FMS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove ''or GPS or FMS'' from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as ''RNAV'' will be redesignated as ''VOR/DME RNAV'' without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on October 30, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

* * * *Effective December 03, 1998*

St. Paul Island, AK, St. Paul Island, NDB/DME or GPS RWY 18, Amdt 2A CANCELLED
St. Paul Island, AK, St. Paul Island, NDB/DME RWY 18, Amdt 2A
Pueblo, CO., Pueblo Memorial, VOR or TACAN or GPS RWY 26R, Amdt 27 CANCELLED
Pueblo, CO., Pueblo Memorial, VOR or TACAN RWY 26R, Amdt 27
Pueblo, CO., Pueblo Memorial, NDB or GPS RWY 8L, Amdt 19 CANCELLED
Pueblo, CO., Pueblo Memorial, NDB RWY 8L, Amdt 19
Glenwood, MN, Glenwood Muni, VOR or GPS RWY 33, Amdt 1 CANCELLED
Glenwood, MN, Glenwood Muni, VOR RWY 33, Amdt 2
Racine, WI, John H Batten Field, NDB or GPS RWY 4, Amdt 3A CANCELLED
Racine, WI, John H Batten Field, NDB RWY 4, Amdt 3A

[FR Doc. 98–29782 Filed 11–5–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29379; Amdt. No. 1897]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reverence in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** sexpensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment stated the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and procedures (44 FR 11035; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on October 30, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective 3 December, 1998

Page, AZ, Page Muni, VOR–B, Orig
Page, AZ, Page Muni, VOR or GPS–A, Orig, CANCELLED
Petaluma, CA, Petaluma Muni, VOR RWY 29, Orig
Titusville, FL, Space Coast Regional, NDB OR GPS RWY 18, Amdt 12
Titusville, FL, Space Coast Regional, ILS RWY 36 Amdt 1
Sulphur, LA, Southland Field, GPS RWY 15, Amdt 1
Sulphur, LA, Southland Field, NBD RWY 15, Amdt 1
Sulphur, LA, Southland Field, LOC RWY 15, Amdt 1
Missoula, MT, Missoula International, ILS RWY 11, Admt 11
Portsmouth, NH, Peace Intl Tradeport, ILS RWY 16, Orig
Portsmouth, NH, Peace Intl Tradeport, GPS RWY 16, Amdt 1
Portsmouth, NH, Peace Intl Tradeport, VOR OR TACAN RWY 16, Amdt 5
Shelby, NC, Shelby Muni, NDB RWY 5, Amdt 4, CANCELLED
Shelby, NC, Shelby Muni, NDB RWY 5, Orig
Shelby, NC, Shelby Muni, NDB RWY 23, Orig

Effective 31 December, 1998

Hugo, OK, Stan Stamper Muni, NDB OR GPS RWY 35, Amdt 1

Effective 28 January, 1999

Yakutat, AK, Yakutat, VOR/DME RWY 2, Amdt 1
Yakutat, AK, Yakutat, VOR/RWY 11, Amdt 11A, CANCELLED
Yakutat, AK, Yakutat, VOR/DME RWY 11, Orig
Yakutat, AK, Yakutat, VOR/ RWY 29, Amdt 4
Yakutat, AK, Yakutat, VOR/DME RWY 29, Orig
Yakutat, AK, Yakutat, LOC/DME BC RWY 29, Amdt 2
Yakutat, AK, Yakutat, NDB RWY 11, Amdt 2
Yakutat, AK, Yakutat, ILS RWY 11, Amdt 4
Yakutat, AK, Yakutat, GPS RWY 2, Orig
Delano, CA, Delano Muni, VOR RWY 32, Amdt 8
Delano, CA, Delano Muni, GPS RWY 32, Amdt 1
Fresno, CA, Fresno-Chandler Downtown, GPS RWY 12R, Orig
Lincoln, CA, Lincoln Regional/Karl Harder Field, GPS RWY 15, Orig
Lincoln, CA, Lincoln Regional/Karl Harder Field, GPS RWY 32, Orig
Madera, CA, Madera Muni, VOR RWY 30, Amdt 10
Madera, CA, Madera Muni, GPS RWY 30, Amdt 1
San Diego (El Cajon), CA, Gillespie Field, LOC–D, Amdt 10
San Jose, CA, San Jose Intl, VOR RWY 12R, Amdt 3
San Jose, CA, San Jose Intl, ILS RWY 12R, Amdt 5
San Jose, CA, San Jose Intl, GPS RWY 12R, Orig
San Jose, CA, San Jose Intl, VOR/DME RWY 30L, Amdt 1
San Jose, CA, San Jose Intl, LOC/DME RWY 30L, Amdt 11
San Jose, CA, San Jose Intl, NDB/DME RWY 30L, Amdt 5
San Jose, CA, San Jose Intl, ILS RWY 30L, Amdt 21
San Jose, CA, San Jose Intl, GPS RWY 30L, Orig
Victorville, CA, Southern California Intl, VOR/DME RWY 17, Orig
Jasper, GA, Pickens County, NDB RWY 34, Amdt 1, CANCELLED
Jasper, GA, Pickens County, GPS RWY 34, Orig
Perry, IA, Perry Muni, GPS RWY 13, Orig
Perry, IA, Perry Muni, GPS RWY 31, Orig
Salina, KS, Salina Muni, VOR RWY 17, Amdt 1
Salina, KS, Salina Muni, NDB RWY 35, Amdt 17
Salina, KS, Salina Muni, ILS RWY 35, Amdt 19
Salina, KS, Salina Muni, GPS RWY 12, Orig
Salina, KS, Salina Muni, GPS RWY 17, Orig
Salina, KS, Salina Muni, GPS RWY 30, Orig
Salina, KS, Salina Muni, GPS RWY 35, Orig
Hartford, KY, Ohio County, GPS RWY 3, Orig
Hartford, KY, Ohio County, GPS RWY 21, Orig
Louisville, KY, Bowman Field, GPS RWY 24, Orig
Natchitoches, LA, Natchitoches Regional, NDB OR GPS RWY 34, Amdt 4
New Orleans, LA, Lakefront, LORAN RNAV RWY 18R, Orig-A, CANCELLED
Rush City, NM, Rush City Rgnl, GPS RWY 34, Orig
Libby, MT, Libby, GPS-A, Orig
Statesville, NC, Statesville Muni, GPS RWY 10, Amdt 1
Superior, NE, Superior Muni, VOR/DME OR GPS-A, Amdt 1
Roswell, NM, Roswell Industrial Air Center, RADAR–1, Orig
Ellenville, NY, Joseph Y Resnick, GPS RWY 4, Orig
Ellenville, NY, Joseph Y Resnick, GPS RWY 22, Orig
Washington Court House, OH, Fayette County, NDB RWY 22, Amdt 4
Washington Court House, OH, Fayette County, GPS RWY 22, Orig
Frederick, OK, Frederick Muni, GPS RWY 35L, Admt 1
Aiken, SC, Aiken Muni, GPS RWY 6, Orig
Aiken, SC, Aiken Muni, GPS RWY 24, Orig
Gregory, SD, Gregory Muni, GPS RWY 31, Amdt 1
San Antonio, TX, San Antonio Intl, GPS RWY 3, Orig
San Antonio, TX, San Antonio Intl, GPS RWY 12R, Orig
San Antonio, TX, San Antonio Intl, GPS RWY 30L, Orig

Note: The FAA published the following amendment in Docket No. 29357, Amdt No. 1893 to Part 97 of the Federal Aviation Regulations (Volume 63, No. 197, Page 54573; dated Tuesday, October 13, 1998) under Section 97.25 effective December 3, 1998 which is hereby rescinded:

San Diego (El Cajon), CA, Gillespie Field, LOC–D, Amdt 10

[FR Doc. 98–29780 Filed 11–5–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29380; Amdt. No. 1898]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPS) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for such SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination–1, FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription— Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airman (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of

the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on October 30, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23, VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * EFFECTIVE UPON PUBLICATION.

FDC date	State	City	Airport	FDC number	SIAP
10/13/98	WI	Cumberland	Cumberland Muni	FDC 8/7207	VOR/DME–A, Orig.
10/16/98	WI	Ladysmith	Ladysmith/Rush County	FDC 8/7274	NDB or GPS Rwy 32, Amdt 2.
10/19/98	WI	Kenosha	Kenosha Regional	FDC 8/7313	ILS Rwy 6L, Amdt 2A.
10/19/98	WI	Kenosha	Kenosha Regional	FDC 8/7314	VOR or GPS Rwy 14, Orig–B.
10/19/98	WI	Kenosha	Kenosha Regional	FDC 8/7315	VOR or GPS Rwy 24R, Orig–A.
10/19/98	WI	Kenosha	Kenosha Regional	FDC 8/7316	NDB or GPS Rwy 6L, Amdt 1A.
10/19/98	WI	Meford	Taylor County	FDC 8/7329	GPS Rwy 27 Orig.
10/19/98	WI	Racine	John H. Batten	FDC 8/7353	VOR or GPS Rwy 4, Orig.
10/19/98	WI	Sheboygan	Sheboygan County Memorial	FDC 8/7346	VOR or GPS Rwy 3, Amdt 6.
10/19/98	WI	Sheboygan	Sheboygan County Memorial	FDC 8/7347	ILS Rwy 21, Orig.
10/19/98	WI	Sheboygan	Sheboygan County Memorial	FDC 8/7348	NDB or GPS Rwy 21, Orig.
10/19/98	WI	Sheboygan	Sheboygan County Memorial	FDC 8/7421	VOR Rwy 21, Amdt 6.
10/19/98	WI	Waukesha	Waukesha County	FDC 8/7341	ILS Rwy 10, Orig.
10/19/98	WI	Waukesha	Waukesha County	FDC 8/7343	NDB or GPS Rwy 28, Amdt 3A.
10/19/98	WI	Waukesha	Waukesha County	FDC 8/7344	VOR or GPS–A, Amdt 15A.
10/19/98	WI	Wisconsin Rapids	Alexander Field South Wood County	FDC 8/7350	NDB or GPS Rwy 29, Amdt 8.
10/19/98	WI	Wisconsin Rapids	Alexander Field South Wood County	FDC 8/7352	SDF Rwy 2, Amdt 4.
10/19/98	WI	Wisconsin Rpaids	Alexander Field South Wood County	FDC 8/7359	NDB or GPS Rwy 2, Amdt 5.
10/19/98	WI	Wisconsin Rapids	Alexander Field South Wood County	FDC 8/7422	VOR/DME or GPS–A, Amdt 9.
10/20/98	WI	Minneapolis	Anoka County-Blaine Airport (Janes Field).	FDC 8/7383	VOR/DME Rwy 26, Amdt 4.
10/20/98	WI	Minneapolis	Anoka County-Blaine Airport (Janes Field).	FDC 8/7414	VOR or GPS Rwy 8, Amdt 11.
10/20/98	WI	Minneapolis	Anoka County-Blaine Airport (Janes Field).	FDC 8/7416	VOR/DME RNAV or GPS Rwy 17, Amdt 3.
10/20/98	WI	Fond Du Lac	Fond Du Lac County	FDC 8/7437	VOR/DME or GPS Rwy 18, Amdt 6.

FDC date	State	City	Airport	FDC number	SIAP
10/20/98	WI	Fond Du Lac	Fond Du Lac County	FDC 8/7438	SDF Rwy 36, Amdt 6.
10/20/98	WI	Fond Du Lac	Fond Du Lac County	FDC 8/7439	GPS Rwy 36, Orig.
10/20/98	WI	Fond Du Lac	Fond Du Lac County	FDC 8/7440	VOR/DME Rwy 36, Amdt 6.
10/20/98	WI	Rhinelander	Rhinelander-Onieda County	FDC 8/7402	ILS Rwy 9, Amdt 6.
10/20/98	WI	Rhinelander	Rhinelander-Onieda County	FDC 8/7403	VOR or GPS Rwy 9, Amdt 4B.
10/20/98	WI	Rhinelander	Rhinelander-Onieda County	FDC 8/7404	VOR/DME or GPS Rwy 27, Orig–B.
10/20/98	WI	Stevens Point	Stevens Point Muni	FDC 8/7389	VOR/DME or GPS Rwy 3, Amdt 14.
10/20/98	WI	Stevens Point	Stevens Point Muni	FDC 8/7390	VOR or GPS Rwy 21, Amdt 18.
10/20/98	WI	Stevens Point	Stevens Point Muni	FDC 8/7394	VOR or GPS Rwy 30, Amdt 17.
10/20/98	WI	Watertown	Watertown Muni	FDC 8/7385	VOR/DME Rwy 29, Orig.
10/20/98	WI	Watertown	Watertown Muni	FDC 8/7386	VOR/DME RNAV or GPS Rwy 5, Amdt 3.
10/20/98	WI	Watertown	Watertown Muni	FDC 8/7387	NDB Rwy 5, Amdt 1.
10/20/98	WI	Watertown	Watertown Muni	FDC 8/7388	NDB or GPS Rwy 23, Amdt 1.
10/20/98	WI	West Bend	West Bend Muni	FDC 8/7406	NDB or GPS Rwy 31, Amdt 10.
10/20/98	WI	West Bend	West Bend Muni	FDC 8/7433	VOR or GPS Rwy 24, Amdt 2.
10/20/98	WI	West Bend	West Bend Muni	FDC 8/7436	VOR Rwy 13, Amdt 5.
10/21/98	WI	Gainesville	Gainesville Regional	FDC 8/7425	NDB Rwy 28, Amdt 8A.
10/21/98	WI	Jacksonville	Jacksonville Intl	FDC 8/7380	NDB Rwy 31, Orig–A.
10/21/98	WI	Ocala	Ocala Regional/Jim Taylor Field	FDC 8/7426	GPS Rwy 18, Orig.
10/21/98	WI	Palatka	Kay Larkin	FDC 8/7427	NDB or GPS Rwy 9, Amdt 1.
10/21/98	WI	Norman	University of Oklahoma/Westheimer	FDC 8/7391	NDB Rwy 3, Amdt 5B.
10/21/98	WI	Norman	University of Oklahoma/Westheimer	FDC 8/7392	VOR/DME RNAV or GPS Rwy 3, Orig–B.
10/21/98	WI	Fond Du Lac	Fond Du Lac County	FDC 8/7454	NDB or GPS Rwy 9, Amdt 6.
10/21/98	WI	Medford	Taylor County	FDC 8/7349	NDB or GPS Rwy 33, Amdt 6.
10/21/98	WI	Racine	John H. Batten	FDC 8/7358	NDB or GPS Rwy 4, Amdt 3A.
10/21/98	WI	Racine	John H. Batten	FDC 8/7420	ILS Rwy 4, Amdt 4A.
10/21/98	WI	Racine	John H. Batten	FDC 8/7453	VOR/DME RNAV or GPS Rwy 22, Amdt 3.
10/21/98	WI	West Bend	West Bend Muni	FDC 8/7410	VOR/DME RNAV or GPS Rwy 13, Amdt 5.
10/21/98	WI	West Bend	West Bend Muni	FDC 8/7435	LOC Rwy 31, Orig.
10/22/98	WI	Plymouth	Plymouth Muni	FDC 8/7486	NDB or GPS Rwy 2, Amdt 2.
10/23/98	WI	Thomaston	Thomaston-Upson County	FDC 8/7513	NDB or GPS Rwy 30 Orig.
10/23/98	WI	Thomaston	Thomaston-Upson County	FDC 8/7514	LOC Rwy 30 Orig.
10/23/98	WI	Portland	Portland Intl	FDC 8/7516	ILS Rwy 10L, Amdt 1A.
10/23/98	OR	Portland	Portland Intl	FDC 8/7517	ILS Rwy 10R Amdt 30D
10/23/98	TN	Crossville	Crossville Memorial-Whitson Field	FDC 8/7515	ILS Rwy 26 Amdt 11
10/26/98	ND	Bottineau	Bottineau Muni	FDC 8/7578	GPS Rwy 31, Orig
10/27/98	MI	Hastings	Hastings	FDC 8/7603	VOR Rwy 12, Orig
10/27/98	MI	Sault Ste Marie	Sanderson Field	FDC 8/7608	VOR or GPS Rwy 32, Amdt 1
10/27/98	TX	Arlington	Arlington Muni	FDC 8/7601	GPS Rwy 34, Amdt 1
10/27/98	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 8/7600	Converging ILS Rwy 17R, Amdt 5A

[FR Doc. 98–29781 Filed 11–5–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 585

Federal Republic of Yugoslavia (Serbia & Montenegro) and Bosnian Serb–Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations: Resolution of Claims Regarding Blocked Montenegrin Vessel Accounts

AGENCY: Office of Foreign Assets Control, Department of the Treasury

ACTION: Final rule; amendment.

SUMMARY: The Office of Foreign Assets Control is amending the Federal Republic of Yugoslavia (Serbia & Montenegro) and Bosnian Serb–Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations to authorize all transactions on and after December 7, 1998 with respect to bank accounts representing the proceeds of the sales of the following two blocked vessels: the M/V KAPETAN MARTINOVIC and the M/V BOR. U.S. persons are generally licensed to seek, obtain and have served on these blocked accounts writs of attachment during the ten–day period prior to the accounts' unblocking if their claims are not settled with the vessels' owners or agents.

EFFECTIVE DATE: November 6, 1998.

FOR FURTHER INFORMATION: John T. Roth, Chief, Policy Planning and Program Management Division (tel.: 202/622–2500), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

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Telnet, or FTP protocol is: fedbbs.access.gpo.gov. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library (''TEL'') in the ''Research Mall'' of the FedWorld bulletin board. By modem, dial 703/321–3339, and select self–expanding file ''T11FR00.EXE'' in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: http://www.treas.gov/ofac, or in fax form through the Office's 24–hour fax–on–demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch–tone telephone.

Background

On April 18, 1997, the Office of Foreign Assets Control issued an amendment to the Federal Republic of Yugoslavia (Serbia & Montenegro) and Bosnian Serb–Controlled Areas of the Republic of Bosnia and Herzegovina Sanctions Regulations, 31 CFR part 585 (the ''Regulations''), providing for the unblocking of the following five vessels: the M/V MOSLAVINA, M/V ZETA, M/V LOVCEN, M/V DURMITOR and M/V BAR (a.k.a. M/V INVIKEN) after 30 days (62 FR 19672, April 23, 1997). Two previously blocked vessels, the M/V KAPETAN MARTINOVIC and the M/V BOR, were sold pursuant to specific licenses and the proceeds of the sales placed in blocked interest–bearing accounts at U.S. financial institutions as substitute property for the blocked vessels.

The accounts representing the two vessels will also be unblocked after 30 days. During this period, U.S. persons may negotiate settlements of their outstanding claims with respect to the vessels with the vessels' owners or agents. If claims remain unresolved by November 27, 1998, U.S. persons are generally licensed to seek and obtain judicial writs of attachment against the funds during the ten–day period prior to the accounts' unblocking.

Since the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

List of Subjects in 31 CFR Part 585

Administrative practice and procedure, Banks, banking, Blocking of assets, Bosnia and Herzegovina, Foreign investments in the United States, Foreign trade, Penalties, Reporting and recordkeeping requirements, Securities, Specially designated nationals, Transportation, Vessels, Yugoslavia.

For the reasons set forth in the preamble, 31 CFR part 585 is amended as set forth below:

1. The authority citation for part 585 is revised to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 49 U.S.C. 40106; 50 U.S.C. 1601–1651, 1701–1706; Pub.L. 101–410, 104 Stat 890 (28 U.S.C. 2461 note); E.O. 12808, 57 FR 23299, 3 CFR, 1992 Comp., p. 305; E.O. 12810, 57 FR 24347, 3 CFR, 1992 Comp., p. 307; E.O. 12831, 58 FR 5253, 3 CFR, 1993 Comp., p. 576; E.O. 12846, 58 FR 25771, 3 CFR, 1993 Comp., p. 599; E.O. 12934, 59 FR 54117, 3 CFR, 1994 Comp., p. 930.

Subpart E to Part 585—Licenses, Authorizations, and Statements of Licensing Policy

2. Section 585.528 is amended by revising the section heading and adding paragraph (d) to read as follows:

§ 585.528 Unblocking of certain vessels and accounts.

* * * * *

(d) All transactions with respect to blocked accounts held at Whitney National Bank, New Orleans, Louisiana, containing the proceeds of the sales of the M/V KAPETAN MARTINOVIC and the M/V BOR are authorized as of December 7, 1998. All transactions by U.S. persons to seek and obtain judicial writs of attachment against the blocked accounts as substitute property for these vessels are authorized as of 10:00 a.m. Eastern Standard Time, November 27, 1998.

Dated: October 7, 1998.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 15, 1998.

Elisabeth A. Bresee,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 98–29789 Filed 11–3–98; 1:59 pm]

BILLING CODE 4810–25–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4081a; FRL–6184–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NO_X RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires volatile organic compounds (VOC) and nitrogen oxides (NO_X) reasonably available control technology (RACT) for 16 major sources located in Pennsylvania. The intended effect of this rule is to approve source-specific plan approvals and operating permits that establish the above-mentioned RACT requirements in accordance with the Clean Air Act.

DATES: This direct final rule is effective without further notice on January 5, 1999, unless EPA receives adverse written comment by December 7, 1998. Should EPA receive such comments, it 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 David Campbell, Air Protection Division, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. 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 Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: David Campbell, (215) 814–2196, at the EPA Region III office or via e-mail at campbell.daveepamail.epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION:

I. Background

On April 20, May 29, and July 24, 1998, the Commonwealth of Pennsylvania submitted formal revisions to its State Implementation Plan (SIP). Each source subject to this rulemaking will be identified and discussed below. Any plan approvals and operating permits submitted coincidentally with those being approved in this document, and not identified below, will be addressed in a separate rulemaking action.

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT for all major VOC and NO_X sources by no later than May 31, 1995. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR), which is established by the CAA. The Pennsylvania portion of the Philadelphia ozone nonattainment area consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties and is classified as severe. The remaining counties in Pennsylvania are classified as either moderate or marginal nonattainment areas or are designated attainment for ozone. However, under section 184 of the CAA, at a minimum, moderate ozone nonattainment area requirements (including RACT as specified in sections 182(b)(2) and 182(f)) apply throughout the OTR. Therefore, RACT is applicable statewide in Pennsylvania. The Pennsylvania submittals that are the subject of this document are meant to satisfy the RACT requirements for 16 sources in Pennsylvania.

Summary of SIP Revision

The details of the RACT requirements for the source-specific plan approvals and operating permits can be found in the docket and accompanying technical support document (TSD) and will not be reiterated in this document. Briefly, EPA is approving a revision to the Pennsylvania SIP pertaining to the determination of RACT for 16 major sources. Several of the plan approvals and operating permits contain conditions irrelevant to the determination of VOC or NO_X RACT. Consequently, these provisions are not being included in this approval for source-specific VOC or NO_X RACT.

RACT Determinations

The following table identifies the individual plan approvals and operating permits EPA is approving. The specific emission limitations and other RACT requirements for these sources are summarized in the accompanying technical support document, which is available upon further request from the EPA Region III office listed in the **ADDRESSES** section of this document.

PENNSYLVANIA—VOC AND NO_X. RACT DETERMINATIONS FOR INDIVIDUAL SOURCES

Source	County	Plan approval (PA #) operating permit (OP #)	Source type	"Major source" pollutant
Eldorado Properties Corporation	Northumberland	OP 49–0016	Petroleum storage and distribution	VOC.
Endura Products, Inc.	Bucks	OP 09–0028	Surface coating	NO_X., VOC.
Ford Electronics & Refrigeration Company	Montgomery	OP 46–0036	Electronics manufacturing	NO_X., VOC.
H&N Packaging, Inc.	Bucks	OP 09–0038	Graphic arts	VOC.
Lancaster County Solid Waste Management Authority.	Lancaster	PA 36–2013	Municipal waste combustion	NO_X.
Monsey Products Company	Chester	OP 15–0031	Protective coatings manufacturing	VOC.
Ortho-McNeil Pharmaceutical	Montgomery	OP 46–0027	Pharmaceutical manufacturing	NO_X., VOC.
Piccari Press, Inc.	Bucks	OP 09–0040	Graphic arts	VOC.
Pierce and Stevens Corporation	Chester	OP 15–0011	Coatings and adhesives manufacturing	VOC.
PQ Corporation	Delaware	OP 23–0016	Flat glass manufacturing	NO_X.
Reynolds Metals Company	Chester	OP 15–0004	Graphic arts	NO_X., VOC.
Rhone-Poulenc Rorer Pharmaceuticals, Inc.	Montgomery	OP 46–0048B	Pharmaceutical manufacturing	NO_X., VOC.
Superior Tube Company	Montgomery	OP 46–0020	Steel tubing manufacturing	NO_X., VOC.
Uniform Tubes Company	Montgomery	OP 46–0046A	Steel tubing manufacturing	VOC.
U.S. Air Force—Willow Grove Air Reserve Station.	Montgomery	OP 46–0072	Military installation	NO_X., VOC.
U.S. Navy—Willow Grove Naval Air Station Joint Reserve Base.	Montgomery	OP 46–0079	Military installation	NO_X., VOC.

EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial submittal 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 rule should adverse comments be filed. This rule will be effective January 5, 1999 without further notice unless the Agency receives adverse comments by December 7, 1998.

If EPA receives such comments, then EPA will publish a document 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. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 5, 1999 and no further action will be taken on the proposed rule. If adverse comments are received that do not pertain to all paragraphs subject to this rule, those paragraphs not affected by the adverse comments will be finalized in the manner described here. Only those paragraphs that receive adverse comments will be withdrawn in the manner described here.

II. Final Action

EPA is approving 1 plan approval and 15 operating permits as NO_X and/or VOC RACT for 16 individual sources.

III. Administrative Requirements

A. Executive Order 12866

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

entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. 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 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 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 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).

F. 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 annual 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 annual 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.

G. Submission to Congress and the Comptroller General

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

H. 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 January 5, 1999. 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 to approve VOC and NO_X RACT determinations for a number of individual sources in Pennsylvania as a revision to the Commonwealth's SIP 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 27, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 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 NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(136) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(136) Revisions to the Pennsylvania Regulations, Chapter 129.91 pertaining to VOC and NO_X RACT, submitted on April 20, May 29, and July 24, 1998, by the Pennsylvania Department of Environmental Protection.

(i) Incorporation by reference.

(A) Three letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations in the form of plan approvals or operating permits on the following dates: April 20, May 29, and July 24, 1998.

(B) Plan approvals (PA), Operating permits (OP):

(*1*) Eldorado Properties Corporation, Northumberland County, OP 49–0016, effective May 1, 1998; except for the operating permit expiration date and item (or portions thereof) Nos. 7, 8, 9, and 10 relating to non-RACT provisions.

(*2*) Endura Products, Inc., Bucks County, OP 09–0028, effective May 13, 1998; except for the operating permit expiration date and item (or portions thereof) Nos. 11A and 15 through 21 relating to non-RACT provisions.

(*3*) Ford Electronics & Refrigeration Company, Montgomery County, OP 46–0036 , effective April 30, 1998; except for the operating permit expiration date and item (or portions thereof) Nos. 11 through 18, 20, and 22 through 26 relating to non-RACT provisions.

(*4*) H & N Packaging, Inc., Bucks County, OP 09–0038, effective June 8, 1998; except for the operating permit expiration date and item (or portions thereof) Nos. 4, 7, 8, and 11 through 20 relating to non-RACT provisions.

(*5*) Lancaster County Solid Waste Management Authority, Lancaster County, PA 36–2013, effective June 3, 1998; except for the plan approval expiration date and item (or portions thereof) Nos. 3 through 9, 11 through 24, 27 through 37, and 39 relating to non-RACT provisions.

(*6*) Monsey Products Company, Chester County, OP 15–0031, effective June 4, 1998; except for the operating permit expiration date and item (or portions thereof) Nos. 9 through 24 relating to non-RACT provisions.

(*7*) Ortho-McNeil Pharmaceutical, Montgomery County, OP 46–0027, effective June 4, 1998; except for the operating permit expiration date and item (or portions thereof) Nos. 4, 9, and 13 through 20 relating to non-RACT provisions.

(*8*) Piccari Press, Inc, Bucks County, OP 09–0040, effective April 29, 1998; except for the operating permit expiration date and item (or portions thereof) Nos. 14, 15, 17, and 19 through 22 relating to non-RACT provisions.

(*9*) Pierce and Stevens Corporation, Chester County, OP 15–0011, effective March 27, 1998; except for the operating permit expiration date and item (or portions thereof) Nos. 11 through 15 relating to non-RACT provisions.

(*10*) PQ Corporation, Delaware County, OP 23–0016, effective June 16, 1998; except for the operating permit expiration date and item (or portions thereof) Nos. 8, 13, and 15 through 19 relating to non-RACT provisions.

(*11*) Reynolds Metals Company, Chester County, OP 15–0004, effective May 8, 1998; except for the operating permit expiration date and item (or portions thereof) Nos. 4, 5, 14, 15, 17 through 42, and 44 through 48 relating to non-RACT provisions.

(*12*) Rhone-Poulenc Rorer Pharmaceutical, Inc, Montgomery County, OP 46–0048B, effective April 2, 1998; except for the operating permit expiration date and item (or portions thereof) Nos. 11 through 42 relating to non-RACT provisions.

(*13*) Superior Tube Company, Montgomery County, OP 46–0020, effective April 17, 1998; except for the operating permit expiration date and item (or portions thereof) Nos. 17 through 25 relating to non-RACT provisions.

(*14*) Uniform Tubes Inc., Montgomery County, OP 46–0046A, effective March 26, 1998; except for the operating permit expiration date and item (or portions thereof) Nos. 16, 17, and 19 through 24 relating to non-RACT provisions.

(*15*) U.S. Air Force—Willow Grove Air Reserve Station, Montgomery County, OP 46–0072, effective May 1, 1998; except for the operating permit expiration date and item (or portions thereof) Nos. 11 through 15 relating to non-RACT provisions.

(*16*) U.S. Navy—Willow Grove Naval Air Station Joint Reserve Base, Montgomery County, OP 46–0079, effective May 4, 1998; except for the operating permit expiration date and item (or portions thereof) Nos. 11, 12, 15 through 26, and 28 through 33 relating to non-RACT provisions.

(ii) Additional Material.

(A) Remainder of the Commonwealth of Pennsylvania's April 20, May 29, and July 24, 1998 submittals VOC and NO_X RACT SIP submittals.

[FR Doc. 98–29656 Filed 11–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[OK–15–1–7399a: FRL–6183–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the State Plan submitted by the State of Oklahoma on July 10, 1998. The plan was developed in accordance with sections 111 and 129 of the Clean Air Act, and provides for implementation and enforcement of the Emissions Guidelines (EG) applicable to existing Municipal Waste Combustors (MWCs) with capacity to combust more than 250 tons per day of municipal solid waste (MSW) (see 40 CFR part 60, subpart Cb).

DATES: This direct final rule is effective January 5, 1999 without further notice, unless EPA receives adverse comment by December 7, 1998. If adverse comments are 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 should be addressed to: Mr. Thomas H. Diggs, Chief, Air Planning Section, EPA Region 6, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 6, Air Planning Section, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, telephone (214) 665–7214.

Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, OK 73101–1677, telephone (405) 702–4100.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION:

I. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (the Act), EPA promulgated New Source Performance Standards (NSPS) applicable to new MWCs and EG applicable to existing MWCs. The NSPS and EG are codified at 40 CFR part 60, subparts Eb and Cb, respectively (see 60 FR 65387). Subparts Cb and Eb regulate the following: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated Subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons per day of MSW (small MWCs), consistent with their opinion in Davis County Solid Waste Management and Recovery District v. EPA, 101 F.3d 1395 (D.C. Cir. 1996), as amended, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Eb and Cb apply only to MWC units with individual capacity to combust more than 250 tons per day of MSW (large MWC units).

Under section 129 of the Act, EG are not Federally enforceable. Section 129(b)(2) of the Act requires states to submit to EPA for approval, plans that implement and enforce the EG. State plans must be at least as protective as the EG, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. The EPA originally promulgated the subpart B provisions on November 17, 1975. The EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in Subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules (see 60 FR 65414).

This action approves the plan submitted by Oklahoma to implement and enforce subpart Cb, as it applies to large MWC units.

II. Discussion

Oklahoma submitted to EPA on July 10, 1998, the following in their 111(d)/129 State Plan for implementation and enforcement of the EG for existing MWCs under their direct jurisdiction in the State of Oklahoma pursuant to 40 CFR 60.23 through 60.26: Demonstration of Legal Authority; Enforceable Mechanism; Inventory of MWC Plants/Units; MWC Emissions Inventory; Emission Limits; Compliance Schedule; Testing, Monitoring, Recordkeeping and Reporting Requirements; Demonstration that the Public had Adequate Notice and Opportunity to Submit Written Comments; Provisions for Submittal of Progress Reports to EPA; and applicable State of Oklahoma statutes. Oklahoma submitted its State Plan after the Court of Appeals vacated subpart Cb as it applies to small MWC units. Thus, the Oklahoma State Plan covers only large MWC units.

One MWC facility exists in Oklahoma with units affected by the MWC EG. This facility is owned by the City of Tulsa, and operated by Ogden-Martin Systems of Tulsa, Incorporated. The Facility has three MWC units, each with the capacity to burn more than 250 tons per day of municipal solid waste.

The approval of the Oklahoma State Plan is based on finding that: (1) The Oklahoma Department of Environmental Quality (ODEQ) provided adequate public notice of public hearings for the proposed rulemaking and State Plan which allow the ODEQ to implement and enforce the EG for large MWCs, and (2) the ODEQ also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facility; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available. Please see the Region & Evaluation Report and the State Plan submittal, as enclosed in the official file, for the detailed technical evaluation of the Oklahoma State Plan.

III. Final Action

The EPA is approving the above referenced State Plan because it meets the Agency requirements. 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 section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. This rule will be effective January 5, 1999 without further notice unless, by December 7, 1998, relevant adverse comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective January 5, 1999.

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

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government,

unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates. Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. 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 on such grounds. Union Electric Co. v. U.S. EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. 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 annual 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 mostly cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual 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.

G. 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.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. 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 December 7, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Municipal waste combustors, Reporting and recordkeeping requirements.

Dated: October 28, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

40 CFR Part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart LL—Oklahoma

2. Section 62.9100 is amended by adding paragraphs (b)(3) and (c)(3) as follows:

§ 62.9100 Identification of plan.

* * * * *

(b) * * *

(3) Oklahoma State Plan for Existing Large Municipal Waste Combustors, submitted on July 10, 1998, by the Oklahoma Department of Environmental Quality.

(c) * * *

(3) Existing municipal waste combustors.

3. Subpart LL is amended by adding a new § 62.9150 and a new undesignated center heading to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Combustors with the Capacity To Combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.9150 Identification of sources.

The plan applies to existing facilities with a municipal waste combustor (MWC) unit capacity greater than 250 tons per day of municipal solid waste (MSW) at the following MWC site: Ogden-Martin Systems of Tulsa, Incorporated, 2122 South Yukon Avenue, Tulsa, OK 74107.

[FR Doc. 98–29654 Filed 11–5–98; 8:45 am]

BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 63, No. 215
Friday, November 6, 1998

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV99–984–1 PR]

Walnuts Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate, from $0.0116 to $0.0133 per kernelweight pound of merchantable walnuts certified, established for the Walnut Marketing Board (Board) under Marketing Order No. 984 for the 1998–99 and subsequent marketing years. The Board is responsible for local administration of the marketing order which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by November 23, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632; or E-mail: moabdocket__clerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, or Mary Kate Nelson, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901; Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on August 1, 1998, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Board for the 1998–99 and subsequent marketing years from $0.0116 to $0.0133 per kernelweight pound of certified merchantable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997–98 and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on September 11, 1998, and unanimously recommended 1998–99 expenditures of $2,620,274 and an assessment rate of $0.0133 per kernelweight pound of merchantable walnuts certified. In comparison, last year's budgeted expenditures were $2,391,289. The assessment rate of $0.0133 is $0.0017 higher than the rate currently in effect. The quantity of assessable walnuts for 1998–99 is estimated at 198,000,000 kernelweight pounds, which is 9,000,000 kernelweight pounds less than 1997–98. With the anticipated decrease in assessable walnuts and increased budget expenditures, a higher assessment rate is needed to generate sufficient revenue

to administer the program for the 1998–99 marketing year as shown in the following table.

	Assessment income	Proposed budget	Difference
Current Rate—$0.0116	$2,296,800	$2,620,274	−$323,474
Proposed Rate—$0.0133	2,633,400	2,620,274	+13,126

The following table compares major budget expenditures recommended by the Board for the 1998–99 and 1997–98 marketing years:

Budget expense categories	1998–99	1997–98
General Expenses	$246,643	$240,326
Office Expenses	163,815	147,126
Research Expenses	2,115,016	2,128,837
Production Research Director	59,800	50,000
Reserve for Contingencies	35,000	25,000

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected merchantable certifications of California walnuts. As mentioned earlier, merchantable certifications for the year are estimated at 198,000,000 kernelweight pounds which should provide $2,663,400 in assessment income. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within five months after the end of the year (§ 984.69.)

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although this assessment rate would be in effect for an indefinite period, the Board would continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 1998–99 budget and those for subsequent marketing years would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,000 producers of walnuts in the production area and approximately 48 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Last year, as a percentage, 33 percent of the handlers shipped over 2.4 million kernelweight pounds of walnuts, and 67 percent of the handlers shipped under 2.4 million kernelweight pounds. Based on an average price of $2.10 per kernelweight pound at point of first sale, the majority of handlers of California walnuts may be classified as small entities.

This rule would increase the assessment rate established for the Board and collected from handlers for the 1998–99 and subsequent marketing years from $0.0116 to $0.0133 per kernelweight pound of merchantable walnuts certified. The Board unanimously recommended 1998–99 expenditures of $2,620,274 and an assessment rate of $0.0133 per kernelweight pound of merchantable walnuts certified. The proposed assessment rate of $0.0133 is $0.0017 higher than the 1997–98 rate. The quantity of assessable walnuts for the 1998–99 marketing year is estimated at 198,000,000 kernelweight pounds. Thus, the $0.0133 rate should provide $2,633,400 in assessment income and be adequate to meet this year's expenses. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within five months after the end of the year (§ 984.69).

The following table compares major budget expenditures recommended by the Board for the 1998–99 and 1997–98 marketing years:

Budget expense categories	1998–99	1997–98
General Expenses	$246,643	$240,326
Office Expenses	163,815	147,126
Research Expenses	2,115,016	2,128,837
Production Research Director	59,800	50,000
Reserve for Contingencies	35,000	25,000

The higher assessment rate is needed to provide sufficient revenue to administer the program for the 1998–99 marketing year as shown in the following table.

	Assessment income	Proposed budget	Difference
Current Rate—$0.0116	$2,296,800	$2,620,274	−$323,474
Proposed Rate—$0.0133	2,633,400	2,620,274	+13,126

The Board reviewed and unanimously recommended 1998–99 expenditures of $2,620,274 which included increases in administrative and office expenses, and production research salary, and a decrease for research programs. Prior to arriving at this budget, the Board considered information and recommendations from various sources, such as the Board's Budget and Personnel Committee, the Research Committee, and the Market Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the walnut industry. After a desired expenditure level was determined, the assessment rate of $0.0133 per kernelweight pound of assessable walnuts was determined by dividing the total recommended budget by the quantity of assessable walnuts, estimated at 198,000,000 kernelweight pounds for the 1998–99 marketing year. This is approximately $13,000 above the anticipated expenses, which the Board determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming marketing year indicates that the grower price for the 1998–99 season could range between $1.45 and $1.58 per kernelweight pound of walnuts. Therefore, the assessment revenue for the 1998–99 marketing year as a percentage of total grower revenue should be less than one percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California walnut industry, and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 11, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1998–99 marketing year began on August 1, 1998, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable walnuts handled during such marketing year; and (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is proposed to be amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 984.347 is proposed to be revised to read as follows:

§ 984.347 Assessment rate.

On and after August 1, 1998, an assessment rate of $0.0133 per kernelweight pound is established for California merchantable walnuts.

Dated: October 21, 1998.

Larry B. Lace,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–29727 Filed 11–5–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[FV–98–702–PR]

Proposed Peanut Promotion, Research, and Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture (the Department or USDA) is seeking comments regarding the establishment of an industry-funded promotion, research, and information program for peanuts. A proposed program—the Peanut Promotion, Research, and Information Order (Order)—was submitted to USDA by the American Farm Bureau Federation. Under the Order, peanut producers would pay an assessment of 1 percent of the price of farmers stock peanuts sold to first handlers. First handlers and marketing associations would remit the assessments to the proposed National Peanut Board (Board). The proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act).

DATES: Comments must be received by January 5, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda__e__farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at: www.ams.usda.gov/fv/rpdocketlist.htm. Pursuant to the PRA, send comments regarding the merits of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of

information technology, or any other aspect of this collection of information to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Angela C. Snyder, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, S.W., Room 2535–S, Washington, D.C. 20250–0244; telephone (910) 860–4689 or fax (202) 205–2800.

SUPPLEMENTARY INFORMATION: This proposed Order is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. 7401–7425; Public Law 104–127, enacted April 4, 1996, hereinafter referred to as the Act.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or state law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within 2 years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary of Agriculture (Secretary) will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Executive Order 12866

This proposed rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

This program is intended to develop and finance an effective and coordinated program of promotion, research, and consumer information to maintain and expand the markets for peanuts. A proposal was submitted by the American Farm Bureau Federation (proponent), working in cooperation with 20 state and regional peanut grower organizations representing the nine primary peanut-producing states. The proponent has proposed that peanut producers approve the program in a referendum in advance of its implementation, and producer members would serve on the 1-member Board that would administer the program under USDA's supervision. In addition, any person subject to the program may file with the Secretary a petition stating that the Order or any provision is not in accordance with law and requesting a modification of the Order or an exemption from the Order.

While the proposed Order would impose certain recordkeeping requirements on first handlers, information required under the proposed Order could be compiled from records currently maintained. First handlers and area marketing associations—for peanuts placed under loan with the Commodity Credit Corporation (CCC) in the price support program administered for CCC by USDA's Farm Service Agency (FSA)—would collect and remit all assessments to the Board. Their responsibilities would include accurate recordkeeping and accounting of all peanuts purchased or contracted for, including the number of pounds handled, price paid to the producer, and when peanuts are purchased. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such records shall be retained for at least two years. These requirements are either already being conducted as a normal business practice or are required by other USDA peanut regulations. The added burden to first handlers and area marketing associations for a peanut promotion, research, and information program is therefore expected to be minimal.

There is also a minimal burden on producers. The burden relates to those producers who would seek nomination to serve on the Board and those who vote in referenda. In addition, the proposed Order would require producers to keep records and to provide information to the Board or the Secretary when requested. However, it is not anticipated that producers would be required to submit forms to the Board. Most likely, the information would be obtained through an audit of a producer's records to confirm information provided by a first handler or if a first handler did not file the required reports as part of the Board's compliance operation.

The estimated annual cost of providing the information to the Board by an estimated 98 respondents (21 producers, 57 first handlers, and 20 producer organizations) would be $4,059.85 or $5.00 per producer, $66.05 per first handler, and $9.50 per producer organization.

The Department would oversee program operations and, if the program is implemented, would conduct a referendum (1) every five years to determine whether peanut producers support continuation of the program, (2) at the request of the Board established under the Order, or (3) at the request of 10 percent or more of the number of persons eligible to vote in referenda. Additionally, the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by those eligible to vote in referenda.

There are approximately 25,000 producers and 57 first handlers of peanuts that would be subject to the program. Most of the producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.601]. Most first handlers would not be classified as small businesses. The SBA defines small agricultural handlers as those whose annual receipts are less than $5 million, and small agricultural

producers are defined as those having annual receipts of not more than $500,000 annually.

According to USDA's National Agricultural Statistics Service (NASS), the nine major peanut-producing states in the United States account for 99 percent of the peanuts grown in this country. The combined production from these states totaled 3.5 billion pounds in 1997. NASS reports that Georgia was the largest producer (38 percent of the total), followed by Texas (23 percent), Alabama (11 percent), North Carolina (9 percent), Florida (6 percent), Virginia (5 percent), Oklahoma (5 percent), New Mexico (1 percent), and South Carolina (1 percent). The farm value of peanuts in 1997 reached $932 million. According to 1992 Census of Agriculture (Census) data, small amounts of peanuts were also grown in seven other states.

According to the proponent, based on Census for these nine states, 36 percent of the peanut-producing counties in the United States had 35 percent or more of their total crop income from peanuts. Twenty-four percent of the counties had 50 percent or more of their crop income from peanuts. From a state perspective, 70 percent of the crop income in Alabama's peanut-producing counties is generated from peanuts. For Virginia, the percentage is 48 percent. In addition, 16,194 farms harvested peanuts in 1992. Of these, 15,914 were located in the nine primary peanut-producing states.

Three main types of peanuts are grown in the United States: Florunners, Virginia, and Spanish. The southeast growing region grows mostly the medium-kernel Runner peanuts. The southwest growing region used to grow two-thirds Spanish and one-third Runner peanuts, but now more Runners than Spanish are grown. Virtually all of the Spanish peanut production is in Oklahoma and Texas. In the Virginia-Carolina region, mainly large-kernel Virginia peanuts are grown. New Mexico grows a fourth type of peanut, the Valencia.

Peanut manufacturers produce three principal peanut products: peanut butter, packaged nuts (including salted, unsalted, flavored, and honey-roasted nuts), and peanut candies. In most years, half of all peanuts produced in the United States for edible purposes are used to manufacture peanut butter. Packaged nuts account for almost one-third of all processed peanuts. Some of these (commonly referred to as ''ballpark'' peanuts) are roasted in the shell, while a much larger quantity is used as shelled peanuts packed as dry-roasted peanuts, salted peanuts, and salted mixed nuts. Some peanuts are ground to produce peanut granules and flour. Other peanuts are crushed to produce oil.

According to USDA's Foreign Agricultural Service, U.S. exports of peanuts (including peanut meal, oil, and peanut butter) totaled 880 million inshell equivalent pounds in 1997, with a value of $285 million (U.S. point of departure for the foreign country). Of the total quantity, 60 percent was shelled peanuts used as nuts, 11 percent was blanched or otherwise prepared or preserved peanuts, 10 percent was inshell peanuts, 7 percent was peanut butter, 4 percent was shelled oil stock peanuts, 4 percent was crude peanut oil, and 3 percent was refined peanut oil.

The major destinations for domestic shelled peanuts for use as nuts are Canada, Mexico, the United Kingdom, and the Netherlands. Blanched or otherwise prepared peanuts are sent mainly to Western Europe, especially the Netherlands, France, and Spain. Inshell peanuts are mainly exported to Canada and various countries in Western Europe. Peanut butter is sent to many countries, with the largest amounts going to Canada and Saudi Arabia. Peanut oil and oil stock peanuts are exported world-wide, but major destinations can vary from year to year.

Approximately 250 million inshell equivalent pounds of peanuts and processed peanuts (including oil and peanut butter) were imported in 1997 with a combined value (f.o.b. country of origin) of $73 million. Most of the imports (45 percent) were shelled peanuts for use as nuts. The major U.S. supplier is Argentina, but several other countries export shelled peanuts to the United States, including Mexico, Nicaragua, and South Africa.

Peanut butter imports are also significant and accounted for about 32 percent of the total quantity of nuts (inshell basis) imported in 1997. Most peanut butter imports come from Canada and Argentina. The other major import category—crude and refined peanut oil—are shipped mainly from Argentina and Nicaragua and account for approximately 18 percent of total imports (inshell equivalent basis). Inshell peanuts, primarily from Mexico, accounted for nearly 3 percent of total imports in 1997. About 3 percent of total imports consisted of blanched or other processed peanuts, mainly from China. Imports of oil stock shelled peanuts were negligible.

Most peanuts produced in other countries are crushed for oil and protein meal. The United States is the main producer of peanuts used in such edible products as peanut butter, roasted peanuts, and peanut candies. Peanuts are one of the world's principal oilseeds, ranking fourth behind soybeans, cottonseed, and rapeseed. India and China usually account for half of the world's peanut production.

According to The Agriculture Statistics Report published by USDA, during the 1995–96 season, the average annual production per U.S. producer was approximately 144,228 pounds of peanuts. Peanuts produced during these growing seasons provided average annual gross sales of $42,222 per peanut producer. The value of the 1995–96 crop was approximately $1.013 billion. During the same period, per capita consumption in the United States was 5.7 pounds of peanuts.

The proposed Order would authorize a fixed assessment paid by producers (to be collected by first handlers) at a rate of 1 percent of the price paid for all farmers stock peanuts, regardless of whether the peanuts are sold commercially or placed under loan with CCC in the price support program administered for CCC by FSA.

Section 516(a)(1) of the Act provides authority to the Secretary to exempt from the Order any de minimis quantity of an agricultural commodity otherwise covered by the Order. The proponent has elected not to provide for exemptions for a de minimis amount regarding peanuts. Therefore, the term de minimis is not defined in the proposed Order, and a de minimis exemption is not included.

At the proposed rate of assessment of 1 percent of farm value, the Board would collect approximately $10 million annually, assuming 1 billion pounds of peanuts are produced. It is expected that the 1 percent rate of assessment would represent approximately 1 percent of producers' average return. In 1995–96, the average price for peanuts was $0.293 per pound.

USDA will keep all individuals informed throughout the referendum process to ensure that they are aware of and are able to participate in the referendum. USDA will publicize information regarding the referendum process so that trade associations and related industry media can be kept informed. If the program is implemented, the newly established Board would recommend to USDA regulations for the program.

In addition, the peanut industry would nominate producers to serve as members on the Board. The Board would recommend the assessment rate, programs and projects, a budget, and any other rules and regulations that might be necessary for the administration of the program. USDA

would ensure that the nominees represent the peanut industry in accordance with the Act. Primary peanut-producing states are defined in the Order as Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, provided that these states maintain 3-year average production of at least 10,000 tons of peanuts each. Minor peanut-producing states are defined in the Order as all peanut-producing states other than the primary peanut-producing states. Currently, the following states would be considered minor states: Arizona, California, Louisiana, Mississippi, and Tennessee.

Each primary producing state would have one member on the Board, and the minor peanut-producing states would be represented collectively by one member on the Board. Each member would have an alternate. Therefore, the Board would have 10 members and 10 alternates.

Proposed recordkeeping and reporting requirements for the peanut promotion, research, and information program would be designed to minimize the burden on first handlers. It is USDA's goal to collect information from forms already submitted to another USDA agency. Any information collection that could not occur through forms already in use would pose minimal additional burden. The peanut promotion program would be designed to strengthen the position of peanuts in the marketplace, maintain and expand existing domestic and foreign markets, and develop new uses and markets for peanuts.

The estimated annual cost of providing the information to the proposed Board by an estimated 98 respondents (21 producers, 57 first handlers, and 20 producer organizations) would be $4,059.85, or $5.00 per producer, $66.05 per first handler, and $9.50 per producer organization.

With regard to alternatives to this proposed rule, the Act itself does provide for authority to tailor a program according to the individual needs of an industry. Provision is made for permissive terms in an order in Section 516 of the Act, and other sections provide for alternatives. For example, Section 514 of the Act provides for orders applicable to (1) producers, (2) first handlers and other persons in the marketing chain as appropriate, and (3) importers (if imports are subject to assessment). Section 516 authorizes an order to provide for exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports. In addition, Section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the order. An order also may provide for its approval in a referendum to be based upon (1) a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. Section 515 of the Act provides for establishment of a board from among producers, first handlers, and others in the marketing chain as appropriate and importers, if importers are subject to assessment.

This proposal includes provisions for both domestic and foreign market expansion and improvement; reserve funds; and an initial referendum to be conducted prior to the Order going into effect and with approval based upon a majority of those persons voting in a referendum.

While we have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed Order on small entities, in order to obtain all the data necessary for a comprehensive analysis, we invite comments concerning potential effects of the proposed Order. In particular, we are interested in obtaining more information on the number and kind of small entities that may incur benefits or costs from implementation of the proposed Order and information on the expected benefits or costs.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR Part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that may be imposed by this Order have been submitted to OMB for approval.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number for background form (number 1 below): 0505–0001.

Expiration Date of Approval: November 30, 1998.

OMB Number for other information collections: 0581–0093.

Expiration Date of Approval: November 30, 2000.

Type of Request: Revision of currently approved information collections for advisory committees and boards and for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the Act.

In addition, there will be the additional burden on producers of voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures which is published separately in this issue of the **Federal Register**.

Under the proposed program, first handlers would be required to collect assessments from producers and file reports with and submit assessments to the Board. While the proposed Order would impose certain recordkeeping requirements on first handlers, information required under the proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the marketing year of their applicability. The estimated annual cost of providing the information to the Board by an estimated 98 respondents (21 producers, 57 first handlers, and 20 producer organizations) would be $4,059.85, or $5.00 per producer, $66.05 per first handler, and $9.50 per producer organization.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other peanut programs administered by the Department. The Department is exploring ways to obtain some of the information needed from forms already in use.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information monthly would coincide with normal industry business practices. Reporting other than monthly would impose an additional and unnecessary recordkeeping burden on first handlers. The timing and frequency of collecting information is

intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual producers and first handlers who are subject to the provisions of the Act.

Therefore, there is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this proposal include:

(1) *A background information form to be completed by candidates nominated by certified producer organizations for appointment to the Board.*

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each producer.

Respondents: Producers.

Estimated number of Respondents: 21 (average of 40 for initial nominations to the Board and approximately 12 respondents annually thereafter for each 3-year period).

Estimated number of Responses per Respondent: 1 every 3 years.

Estimated Total Annual Burden on Respondents: 20 hours for the initial nominations to the promotion board and 6 hours annually thereafter.

(2) *A monthly report by each first handler of peanuts.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per each first handler reporting on peanuts handled.

Respondents: First handlers.

Estimated number of Respondents: 57.

Estimated number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 342 hours.

(3) *A nomination form by which certified producer organizations would nominate producers for membership on the Board.*

Estimate of Burden: Public reporting burden for this collecting of information is estimated to average 0.5 hours per response.

Respondents: Certified producer organizations.

Estimated number of Respondents: 20.

Estimated number of Responses per Respondent: 1 per year.

Estimated Total Annual Burden on Respondents: 10 hours.

(4) *A request of peanut producer organizations for certification of eligibility to nominate Board members.*

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each organization.

Respondents: Peanut producer organizations.

Estimated number of Respondents: 9.

Estimated number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 9 hours.

(5) *A requirement to maintain records sufficient to verify reports submitted under the Order.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Recordkeepers: First handlers.

Estimated number of recordkeepers: 57.

Estimated total recordkeeping hours: 28.5 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the Department's oversight of the program, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Act provides for the submission of proposals for a peanut promotion, research, and information order by industry organizations or any other interested person affected by the Act.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–0093. Comments addressing the nomination background information form should reference OMB No. 0505–0001. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time-frames listed above. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

The Act authorizes the Secretary, under a generic authority, to establish agricultural commodity research and promotion orders. Section 516 of the Act provides permissive terms for orders, and other sections provide for alternatives. For example, Section 514 of the Act provides for orders applicable to (1) producers, (2) first handlers and others in the marketing chain as appropriate, and (3) importers (if importers are subject to assessment). Section 516 authorizes an order to provide for exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports. In addition, Section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the order. The order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

This proposed Order includes provisions for both domestic and foreign market expansion and improvement, reserve funds, and an initial referendum to be conducted prior to the Order going into effect and with approval based upon a majority of those persons voting in the referendum.

The Act provides for a number of optional provisions that allow the tailoring of orders for different commodities.

The proponent, working in cooperation with 20 state and regional peanut industry organizations representing the nine primary peanut-producing states, has requested the establishment of a national peanut promotion, research, and information order pursuant to the Act. The Act authorizes the establishment and operation of generic promotion programs which may include a combination of promotion, research, industry information, and consumer

information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. This proposal would provide for the development and financing of an effective and coordinated program of research, promotion, and information for peanuts. The purpose of the program would be to strengthen the position of peanuts in domestic and foreign markets, and to develop, maintain, and expand markets for peanuts.

The program would not become effective until approved by peanut producers in a referendum to be conducted by USDA. Section 518 of the Act provides for the Department (1) to conduct an initial referendum, preceding a proposed order's effective date, among persons who would pay assessments under the program or (2) to implement a proposed order, pending the conduct of a referendum, among persons subject to assessments, within 3 years after assessments first begin.

In accordance with Section 518(e) of the Act, the results of the referendum must be determined one of three ways: (1) Approval by a majority of those persons voting; (2) approval by persons voting who represent a majority of the volume of the commodity covered by the program; or (3) approval by a majority of the persons voting who also represent a majority of the volume of the commodity produced, handled, or imported by the persons voting.

The proponent proposes that the Department conduct an initial referendum preceding the proposed Order's effective date and that approval of the Order be determined by a simple majority of the producers voting.

In accordance with the Act, the Department would oversee the program's operations. In addition, the Act requires the Secretary to conduct subsequent referenda: (1) not later than 7 years after assessments first begin under the Order; or (2) at the request of the board established under the Order; or (3) at the request of 10 percent or more of the number of persons eligible to vote. The proponent group has requested that a referendum be conducted every 5 years to determine if producers want the program to continue.

In addition to these criteria, the Act provides that the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by persons eligible to vote.

The proponent states that the United States Congress has established a number of programs since the early 1930's to support and stabilize farm prices and income and to adjust production in 1934. In 1949, a revised system of marketing quotas and acreage allotments for peanuts began. Since then, Congress has amended and changed the peanut program a number of times, with the latest changes made to the peanut title in 1996 with the passage of the Federal Agriculture Improvement and Reform (FAIR) Act. The new program retains its price support and supply management elements while operating at no cost to the government other than administrative expenses common to all price support programs. The new program also lowers the loan rate for quota peanuts from $678 per ton to $610 per ton and freezes that price for the life of the program, through 2002. In addition, the quota level, which the Secretary could not set below 1.35 million tons prior to passage of the FAIR Act, has been reduced to equal the anticipated domestic demand for peanuts.

The proponent has identified a number of market and production factors that suggest the need for a national research, promotion, and information program for peanuts. The most basic problem affecting peanut marketing is a drop in demand caused by negative health perceptions of peanuts' fat content, competition from other snack foods, and lack of awareness among young people.

In addition, the proponent cites other factors. Government purchases of peanut butter is down. If purchases return to historic heights, purchases will still not be enough to reverse supply/demand trends. Also, a 1997 Gallup survey revealed that 87 percent of all consumers are peanut users, while 13 percent did not consume any peanuts in the past year. Per capita consumption of peanuts has been decreasing. It appears now that demand trends have bottomed out and are starting to rise. National promotion could bolster this trend.

The same survey indicated that the percent of peanut non-users is increasing, as is the percent of young people not consuming peanuts or peanut products. Thirty-five percent of all consumers surveyed indicated they did not consume any snack peanuts, and more than 40 percent thought peanuts contained cholesterol when, in fact, peanuts contain none.

The proponent also states that 26 percent of all consumers did not consume any peanut butter last year. Peanut butter could be an affordable alternative for low-income consumers in comparison to other sandwich options, but fewer and fewer low income consumers are using peanut butter as an alternative.

In addition, in 1996, the farm value of U.S. peanuts fell below $1 billion to $970 million for the first time since 1982.

Further, the domestic industry is facing increased competition in the United States and abroad from lower-priced peanuts produced in other countries. The value of peanuts and peanut products imported into the United States exceeded $100 million in 1996.

All of these factors have led the domestic peanut industry to seek a national promotion program to find ways to further increase the consumption of U.S. peanuts.

Section 516(f) of the Act allows an order to authorize the levying of assessments on imports of the commodity covered by the program or on products containing that commodity, at a rate comparable to the rate determined for the domestic agricultural commodity covered by the order. The proponent has elected in its proposal not to assess imports.

The assessment levied on domestically produced peanuts would be used to pay for promotion, research, and consumer and industry information as well as administration, maintenance, and functioning of the Board. Expenses incurred by the Secretary in implementing and administering the Order, including referenda costs, also would be paid from assessments.

Sections 516(e)(1) and (2) of the Act state that the Secretary may provide credits of assessments for generic and branded activities. The proponent has elected not to propose credits for generic or branded activities. Therefore, the terms ''generic activities'' and ''branded activities'' are not defined in the Order, and credits for assessments would not be made.

First handlers would be responsible for the collection of assessments from the producer and payment to the promotion Board. First handlers would be required to maintain records for each producer for whom peanuts are handled, including peanuts produced by the first handler. In addition, first handlers would be required to file reports regarding the collection, payment, or remittance of the assessments.

All information obtained from persons subject to this Order as a result of recordkeeping and reporting requirements will be kept confidential by all officers, employees, and agents of the Department and of the Board. However, this information may be

disclosed only if the Secretary considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of the Department is a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports or on information relating to a number of persons subject to an order if the statements do not identify the information furnished by any person or the publication, by direction of the Secretary of the name of any person violating the Order and a statement of the particular provisions of the Order violated by the person.

The proposed Order provides for the Department to conduct an initial referendum preceding the proposed Order's effective date. Therefore, the proposed Order must be approved by a majority of the producers voting for approval. The proposed Order also provides for subsequent referenda to be conducted (1) every 5 years after the program is in effect, (2) at the request of the Board established under the Order, or (3) when requested by 10 percent or more of peanut producers covered by the Order. In addition, the Secretary may conduct a referendum at any time.

The Act requires that such a proposed order provide for the establishment of a board to administer the program under USDA supervision. The proponent's proposal provides for a 10-member National Peanut Board, as stated earlier.

To ensure fair and equitable representation of the peanut industry on the Board, the Act requires membership on the Board to reflect the geographical distribution of the production of peanuts. To that end, this proposal provides that each primary peanut-producing state would be represented on the Board by one producer member and alternate and that the minor peanut-producing states would be represented collectively by one at-large producer member and alternate. Based on current information on production in the various states, the Order defines the primary peanut-producing states as Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, provided that these states maintain three-year average production of at least 10,000 tons of peanuts.

Upon implementation of the Order and pursuant to the Act, the Board would at least once in each five-year period, but not more frequently than once in each three-year period, review the geographical distribution of peanuts in the United States and make a recommendation to the Secretary after considering the results of its review and other information it deems relevant regarding the reapportionment of the Board.

Members and alternates would serve for three-year terms, except that the members and alternates appointed to the initial Board would serve proportionately for two-, three-, and four-year terms. No member or alternate would serve more than two consecutive three-year terms.

The proposed Order submitted by the proponent is summarized as follows:

Sections 1216.01 through 1216.31 of the proposed Order define certain terms, such as peanuts, minor peanut-producing states, primary peanut-producing states, producer, and quota peanuts, which are used in the proposed Order.

Sections 1216.40 through 1216.49 include provisions relating to the Board establishment and membership, nominations, selections and acceptance, term of office, vacancies, alternate members, and compensation and reimbursement; procedures for conducting Board business; and powers and duties of the Board, which is the governing body authorized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about peanuts, subject to oversight of the Secretary. These sections also include maintenance of books and records by the Board and prohibited activities of the Board, its employees, and agents.

In order to ensure support throughout the production area for all Board votes, § 1216.46(b) provides that all Board members' votes would be weighted by the value of production represented by each member. The votes of members from primary peanut-producing states would represent their respective states' three-year running average of total gross farm income derived from all peanut sales. The votes of the at-large Board member would equal the collective value of production from all minor peanut-producing states' three year running average of total gross farm income from all peanut sales. Any Board action would require the concurring votes of members collectively representing more than 50 percent of the total U.S. gross farm income derived from all peanut sales plus an additional two votes from other Board members, provided a minimum of five members concur. Therefore, regardless of the volume voted by the members, no Board action would be approved unless at least five members voted in favor of it. Similarly, if five members vote in favor of a motion and those five members do not represent more than 50 percent of the total U.S. gross farm income derived from all peanut sales, the motion would not be approved.

Sections 1216.50 through 1216.55 would cover budget review and approval; authorize the collection of assessments; use of assessments, including reimbursement of necessary expenses incurred by the Board for the performance of its duties, including expenses incurred for the Department's oversight responsibilities; specify who pays the assessment and how; authorize the imposition of a late-payment charge on past-due assessments; address programs, plans, and projects; require the Board to conduct periodically an independent review of its overall program; specify a program operating reserve; and cover the investment of assessment funds.

The proponent recommends a proposed assessment rate of 1 percent of the price paid for all farmers stock peanuts sold. Peanut producers may sell their peanuts commercially or put them in a government loan program. For peanuts sold commercially, the first handler would remit the assessment to the Board. The assessment would be 1 percent of the price paid for the peanuts.

Under a loan program administered by FSA, a peanut producer also has the option of delivering the peanuts to an area marketing association and receiving payment for the peanuts from CCC. If the peanut promotion program is implemented, the area association would deduct 1 percent of the payment from the producer's proceeds and remit that amount to the Board as the producer's initial assessment payment on the peanuts. After the association sells the peanuts, the area association reimburses CCC the amount of the payment to the producer and deducts its expenses from the selling price. If the peanut promotion program is implemented and if there is any profit from the sale of the peanuts, the association would deduct 1 percent of the profit, remit that amount to the Board to pay the producer's assessment, and pay the balance to the producer.

The Board may raise or lower the rate of assessment with approval of the Secretary.

The federal debt collection procedures referenced in § 1216.51(g) include those set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by AMS (60 FR 12533, March 7, 1995).

Sections 1216.60 through 1206.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information from such books, records, or reports.

Section 1216.70 describes the certification requirements for peanut-producer organizations to be eligible to nominate Board members and submit requests for funds from the Board.

Sections 1216.80 through 1216.87 describe the rights of the Secretary; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after suspension or termination; address personal liability, separability, and amendments; and address patents, copyrights, trademarks, information, publications, and product formulations developed through the use of assessment funds.

The Department has modified the proponent's proposal to make it consistent with the Act, other similar national research and promotion programs, and other Federal peanut programs administered by the Department; for consistency throughout the text; and for clarity.

In the definitions and throughout the text of the Order, ''farmer stock peanuts'' was changed to ''farmers stock peanuts'' for consistency with industry use and existing regulations.

A definition for ''first handler'' was added for consistency with similar national research and promotion programs, and subsequent sections were renumbered accordingly.

The definition of ''information'' was rewritten to include activities designed to enhance peanuts' image, to add definitions of ''consumer information'' and ''producer information,'' and to conform with the Act.

The definition of ''quota peanuts'' was rewritten to reference 7 CFR Part 729.

In § 1216.41 (Nominations), the phrase ''qualified nominating organizations'' was changed to read ''certified nominating organizations'' for consistency with the text.

In addition, § 1216.50(h) has been revised to be consistent with the Act. Paragraph (e)(5) *Limitation on spending* of § 515 of the Act states that a board ''may not expend for administration (except for reimbursements to the Secretary * * *)'' an amount that exceeds 15 percent of the board's income during any fiscal year. The proposal submitted set a more stringent limitation of 10 percent and stated that administrative expenses included reimbursement to the Secretary. The Order may set the more stringent limitation of 10 percent because that amount is less than the 15 percent provided in the Act. However, the Order may not provide that reimbursements to the Secretary are covered by the limitation on spending.

Other minor changes which do not materially affect the text were made for consistency. For instance, in the definitions, ''additional peanuts are * * *'' was changed to read ''additional peanuts means * * *'' As another example, in sections containing only one paragraph, the paragraph designation was removed. Minor grammatical changes also were made.

The proponent submitted ''Subpart B—Voting Procedures and Approval of the Peanut Promotion, Research, and Information Order.'' This proposed subpart has been revised and included as § 1216.80 of the proposed Order.

The Department has determined that this proposed Order is consistent with and will effectuate the purposes of the Act.

The proposal set forth below has not received the approval of the Secretary.

List of Subjects in 7 CFR Part 1216

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Peanut promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7 of Chapter XI of the Code of Federal Regulations be amended as follows:

1. Part 1216 is added to read as follows:

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Peanut Promotion, Research, and Information Order

Definitions

Sec.

National Peanut Board

Expenses and Assessments

Reports, Books, and Records

Certification of Peanut Producer Organizations

Miscellaneous

Authority: 7 U.S.C. 7401–7425.

Subpart A—Peanut Promotion, Research, and Information Order

Definitions

§ 1216.01 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7401–7425; Public Law 104–127; 110 Stat. 1029), or any amendments thereto.

§ 1216.02 Additional peanuts.

Additional peanuts means peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

§ 1216.03 Area marketing association.

Area marketing association means an association selected and approved by the Secretary to conduct activities under regulations of the Department's Farm

Service Agency. Under an inter-agency agreement, area marketing associations will assist in the collection of assessments under this subpart. The approved area marketing associations and the areas served by such associations are as follows:

(a) *GFA Peanut Association of Camilla, Georgia (GFA).* GFA serves the southeastern area consisting of Puerto Rico, the U.S. Virgin Islands, and the states of Alabama, Florida, Georgia, Mississippi, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers;

(b) *Peanut Growers Cooperative Marketing Association of Franklin, Virginia (PGCMA).* PGCMA serves the Virginia-Carolina area consisting of the District of Columbia, and the states of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers; and

(c) *Southwestern Peanut Growers Association of Gorman, Texas (SWPGA).* SWPGA serves the southwestern area consisting of the states of Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming, and all other territories of the United States not listed in paragraph (a) or (b) of this section.

§ 1216.04 Board.

Board means the administrative body referred to as the National Peanut Board established pursuant to § 1216.40 of this subpart.

§ 1216.05 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1216.06 Contract export additional peanuts.

Contract export additional peanuts are additional peanuts for exportation, including peanuts for crushing for exportation, for which a contract has been entered into between a first handler and a producer.

§ 1216.07 Department.

Department means the U.S. Department of Agriculture.

§ 1216.08 Farmers stock peanuts.

Farmers stock peanuts means picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, loose shelled kernels and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels that are removed from farmers stock peanuts before such farmers stock peanuts are marketed.

§ 1216.09 First handler.

First handler means any person who handles peanuts in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman, or other intermediary between the producer and the person handling.

§ 1216.10 Fiscal year.

Fiscal year is synonymous with crop year and means the 12-month period beginning with August 1 of any year and ending with July 31 of the following year, or such other period as determined by the Board and approved by the Secretary.

§ 1216.11 Handle.

Handle means to engage in the receiving or acquiring, cleaning and shelling, cleaning inshell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned inshell or shelled peanuts, or other activity causing peanuts to enter the current of commerce: *Provided*, That this term does not include sales or deliveries of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handler(s) and *Provided further*, That this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler.

§ 1216.12 Information.

Information means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increased market efficiency, and activities that are designed to enhance the image of peanuts on a national or international basis. These include:

(a) *Consumer information*, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of peanuts; and

(b) *Producer information*, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the peanut industry, and activities to enhance the image of the peanut industry.

§ 1216.13 Market.

Market means to sell or otherwise dispose of peanuts into interstate, foreign, or intrastate commerce by buying, marketing, distributing, or otherwise placing peanuts into commerce.

§ 1216.14 Minor peanut-producing states.

Minor peanut-producing states means all peanut-producing states with the exception of Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia.

§ 1216.15 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1216.16 Part and subpart.

Part means the Peanut Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a ''subpart'' of such part.

§ 1216.17 Peanuts.

Peanuts means the seeds of the legume *arachis hypogaea* and includes both inshell and shelled peanuts other than those marketed by the producer in green form for consumption as boiled peanuts.

§ 1216.18 Peanut producer organization.

Peanut producer organization means a state-legislated peanut promotion, research, and education commission or organization. For states without a state-legislated peanut promotion, research, and education commission or organization, ''peanut producer organization'' means any organization which has the primary purpose of representing peanut producers and has peanut producers as members.

§ 1216.19 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1216.20 Primary peanut-producing states.

Primary peanut-producing states means Alabama, Florida, Georgia, New

Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, *Provided,* these states maintain three-year average production of at least 10,000 tons of peanuts.

§ 1216.21 Producer.

Producer means any person engaged in the production and sale of peanuts and who owns, or shares the ownership and risk of loss of, the crop. This does not include quota holders who do not share in the risk of loss of the crop.

§ 1216.22 Promotion.

Promotion means any action taken by the National Peanut Board under this Order, including paid advertising, to present a favorable image of peanuts to the public to improve the competitive position of peanuts in the marketplace, including domestic and international markets, and to stimulate sales of peanuts.

§ 1216.23 Quota peanuts.

Quota peanuts means peanuts which are:

(a) Eligible for domestic edible uses; and

(b) Marketed or considered marketed from a farm as quota peanuts pursuant to the provisions of 7 CFR Part 729 and are not in excess of the effective farm poundage quota established for the farm on which such peanuts were produced.

§ 1216.24 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of peanuts, including research relating to nutritional value and cost of production.

§ 1216.25 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1216.26 Suspend.

Suspend means to issue a rule under section 553 of title 5, United States Code, to temporarily prevent the operation of an order during a particular period of time specified in the rule.

§ 1216.27 State.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 1216.28 Terminate.

Terminate means to issue a rule under section 553 of title 5, United States Code, to cancel permanently the operation of an order beginning on a date certain specified in the rule.

§ 1216.29 United States.

United States means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

National Peanut Board

§ 1216.40 Establishment and membership.

(a) Establishment of a National Peanut Board. There is hereby established a National Peanut Board, hereinafter called the Board, composed of no more than 10 peanut producers and alternates, appointed by the Secretary from nominations as follows:

(1) Nine members and alternates. One member and one alternate shall be appointed from each primary peanut-producing state, who are producers and whose nominations have been submitted by certified peanut producer organizations within a primary peanut-producing state.

(2) The minor peanut-producing states shall collectively have one at-large member and one alternate, who are producers, to be appointed by the Secretary from nominations submitted by certified peanut producer organizations within minor peanut-producing states or from other certified farm organizations that include peanut producers as part of their membership.

(b) Adjustment of membership. At least once in each five-year period, but not more frequently than once in each three-year period, the Board, or a person or agency designated by the Board, shall review the geographical distribution of peanuts in the United States and make recommendation(s) to the Secretary to continue without change, or whether changes should be made in the number of representatives on the Board to reflect changes in the geographical distribution of the production of peanuts.

§ 1216.41 Nominations.

(a) All nominations authorized under § 1216.40 shall be made within such a period of time as the Secretary shall prescribe. Eligible peanut producer organizations within each state as certified pursuant to § 1216.70 shall nominate two qualified persons for each member and each alternate member. The nominees shall be chosen at an open meeting by election among the general membership. Any certified peanut producer organization representing a minor peanut-producing state may nominate two eligible persons for each member and two eligible persons for each alternate member.

(b) As soon as practicable after this subpart becomes effective, the Secretary shall obtain nominations for appointment to the initial promotion Board from certified nominating organizations. In any subsequent year in which an appointment to the Board is to be made, nominations for positions whose terms will expire shall be obtained from certified nominating organizations by the Board's staff and submitted to the Secretary by May 1 of such year, or other such date as approved by the Secretary.

(c) Except for initial Board members, whose nomination process will be initiated by the Secretary, the Board shall issue call for nominations by March 1 of each year.

§ 1216.42 Selection.

From the nominations, the Secretary shall select the members of the Board and alternates for each primary peanut-producing state. The Secretary shall select one member and one alternate from all nominations submitted by certified peanut producer organizations representing minor peanut-producing states.

§ 1216.43 Term of office.

(a) All members and alternates of the Board shall each serve for terms of three years, except that the members and alternates appointed to the initial Board shall serve proportionately for two-, three-, and four-year terms, with the length of the terms determined at random. No member or alternate may serve more than two consecutive three-year terms. An alternate, after serving two consecutive three-year terms, may serve as a member for an additional two consecutive three-year terms. A member, after serving two consecutive three-year terms, may serve as an alternate for an additional two consecutive three-year terms. Each member and alternate shall continue to serve until a successor is selected and has qualified.

(1) Those members serving initial terms of two or four years may serve one successive three-year term.

(2) Any successor serving one year or less may serve two consecutive three-year terms.

§ 1216.44 Vacancies.

To fill any vacancy resulting from the failure to qualify of any person selected as a member or as an alternate member of the Board, or in the event of death, removal, resignation, or disqualification of any member or alternate member of

the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and selected in the manner specified in § 1216.40 of this Order.

§ 1216.45 Alternate members.

An alternate member of the Board, during the absence of the member for the primary peanut-producing state or at-large member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of death, removal, resignation, or disqualification of any member, the alternate for that state or at-large member shall act for the member until a successor for such member is selected and qualified. In the event that both a producer member of the Board and the alternate are unable to attend a meeting, the Board may not designate any other alternate to serve in such member's or alternate's place and stead for such a meeting.

§ 1216.46 Procedure.

(a) A majority of the members of the Board, including alternate members acting for members, shall constitute a quorum.

(b) At assembled meetings, all votes shall be cast in person. Board actions shall be weighted by value of production as determined by a primary peanut-producing state's three-year running average of total gross farm income derived from all peanut sales. The at-large Board member's vote shall be weighted by the collective value of production from all minor peanut-producing states' three-year running average of total gross farm income derived from all peanut sales. Any Board action shall require the concurring votes of members or alternates from states representing more than 50 percent of total U.S. gross farm income derived from all peanut sales, plus an additional two votes from any other Board members, provided a minimum of five votes concur.

(c) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and in matters of an emergency nature when there is not time to call an assembled meeting of the Board, the Board may also take action as prescribed in this section by mail, facsimile, telephone, or any telecommunication method appropriate for the conduct of business, but any such action shall be confirmed in writing within 30 days.

(d) There shall be no voting by proxy.

(e) The chairperson shall be a voting member.

§ 1216.47 Compensation and reimbursement.

The members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board members.

§ 1216.48 Powers and duties of the National Peanut Board.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines to be appropriate;

(d) To employ persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and make such other reports available as the Board or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(f) To prepare and submit for approval of the Secretary fiscal year budgets in accordance with § 1216.50;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(h) To cause its books to be audited by a competent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(i) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board to the Secretary;

(j) To act as intermediary between the Secretary and any producer or first handler;

(k) To furnish to the Secretary any information or records that the Secretary may request;

(l) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(m) To recommend to the Secretary such amendments to the Order as the Board considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the peanut industry's position in the marketplace; maintain and expand existing markets and uses for peanuts; and to carry out programs, plans, and projects designed to provide maximum benefits to the peanut industry.

§ 1216.49 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action

for the purpose of influencing legislation or governmental action or policy, including local, state, national, and international, other than recommending to the Secretary amendments to the Order; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the Order, that is false or misleading or disparaging to another agricultural commodity.

Expenses and Assessments

§ 1216.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(d) The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal year an amount that exceeds 10 percent of the assessments and other income received by the Board for that fiscal year. Reimbursements to the Secretary required under paragraph (g) are excluded from this limitation on spending.

(i) The Board shall allocate, to the extent practicable, 80 percent of the assessments collected on quota peanuts for any fiscal year on national and regional promotion, research, and information activities. The Board shall allocate, to the extent practicable, 20 percent of assessments collected on quota peanuts for any fiscal year for use in state or regional research programs. Specific percentages and amounts shall be determined annually by the Board, with the approval of the Secretary.

(j) Certified peanut producer organizations may submit requests for funding for research and/or generic promotion projects. Amounts approved for each state shall not exceed the pro rata share of funds available for that state as determined by the Board and approved by the Secretary. Amounts allocated by the Board for state research or promotion activities will be based on requests submitted to the Board and approved when it is determined that they meet the goals and objectives stated in the Order.

(k) Assessments collected, less pro rata administrative expenses, from the gross sales of contract export additional peanuts shall be provided by the Board to an appropriate organization approved by the Secretary as the primary contractor for the promotion and related research of export peanuts.

(l) The Board shall determine annually how total funds shall be allocated pursuant to paragraph (i), (j), and (k) of this section, with the approval of the Secretary.

§ 1216.51 Assessments.

(a) The funds to cover the Board's expenses shall be acquired by the levying of assessments upon producers as prescribed in regulations issued by the Secretary.

(b) Each first handler, at such times and in such manner as prescribed by regulations issued by the Secretary, shall collect from each producer and pay assessments to the Board on all peanuts handled, including peanuts owned by the first handler: *Provided,* that the deadline prescribed in the regulations for remittance of assessments shall be no more than 60 days after the last day of the month in which the peanuts were marketed.

(c) Such assessments shall be levied at a rate of 1 percent of the price paid for all farmers stock peanuts sold.

(d) For peanuts placed under loan with the Department's Commodity Credit Corporation, each area marketing association shall remit to the Board the following:

(1) One (1) percent of the initial price paid for either quota or additional peanuts no more than 60 days after the last day of the month in which the peanuts were placed under loan; and

(2) One (1) percent of the profit from the sale of the peanuts within 60 days after the final day of the area association's fiscal year.

(e) All assessments collected under this section are to be used for expenses and expenditures pursuant to this Order and for the establishment of an operating reserve as prescribed in the Order.

(f) The Board shall impose a late payment charge on any person who fails to remit to the Board the total amount for which the person is liable on or before the payment due date established under this section. The late payment charge will be in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(g) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(h) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

§ 1216.52 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to peanuts; and

(2) The establishment and conduct of research with respect to the use, nutritional value, sale, distribution, and marketing of peanuts and peanut products, and the creation of new products thereof, to the end that marketing and use of peanuts may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of peanuts.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or consumer information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or consumer information, then the Board shall terminate such program, plan, or project.

(d) No program, plan, or project shall make any false claims on behalf of peanuts or use unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product. Peanuts of all domestic origins shall be treated equally.

§ 1216.53 Independent evaluation.

The Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1216.54 Operating reserve.

The Board shall establish an operating monetary reserve and may carry over to subsequent fiscal years excess funds in a reserve so established; *Provided,* that funds in the reserve shall not exceed any fiscal year's anticipated expenses.

§ 1216.55 Investment of funds.

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency of the United States; general obligations of any state or any political subdivision of a state; interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve system; or obligations that are fully guaranteed as to principal and interest by the United States.

Reports, Books, and Records

§ 1216.60 Reports.

Each first handler and producer subject to this subpart may be required to provide to the Board periodically such information as is required by regulations, which may include but not be limited to the following:

(a) Number of pounds handled and the price paid to the producer;

(b) Number of pounds on which an assessment was collected;

(c) Name and address of person from whom the first handler has collected the assessments on each pound handled; and

(d) Date collection was made on each pound handled.

§ 1216.61 Books and records.

Each first handler and producer subject to this subpart shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the marketing year of their applicability.

§ 1216.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, producers, importers, exporters, or handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Certification of Peanut Producer Organizations

§ 1216.70 Certification.

(a) Organizations receiving certification from the Secretary will be entitled to submit nominations for Board membership to Secretary for appointment and to submit requests for funding to the Board.

(b) For major peanut-producing states, state-legislated peanut promotion, research, and information organizations may request certification, provided the state-legislated promotion program submits a factual report that shall contain information deemed relevant and specified by the Secretary for the making of such determination pursuant to paragraph (e) of this section.

(c) If a state-legislated peanut promotion, research and information organization in a major peanut-producing state does not elect to seek certification from the Secretary within a specified time period as determined by the Secretary, or does not meet eligibility requirements as specified by the Secretary, then any peanut producer organization whose primary purpose is to represent peanut producers within a primary peanut-producing state, or any other organization which has peanut producers as part of its membership, may request certification. Certification shall be based, in addition to other available information, upon a factual report submitted by the organization that shall contain information deemed relevant and specified by the Secretary for the making of such determination pursuant to paragraph (e) of this section.

(d) For minor peanut-producing states, any organization that has peanut producers as part of its membership may request certification.

(e) The information required for certification by the Secretary may include, but is not limited to, the following:

(1) The geographic distribution within the state covered by the organization's active membership;

(2) The nature and size of the organization's active membership in the state, proportion of total such active membership accounted for by producers, a map showing the peanut-producing counties in such state in which the organization has members, the volume of peanuts produced in each such county, the number of peanut producers in each such county, and the size of the organization's active peanut producer membership in each such county;

(3) The extent to which the peanut producer membership of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organization's operating funds are derived;

(6) Functions of the organization;

(7) The organization's ability and willingness to further the aims and objectives of the Act and Order; and,

(8) Demonstrated experience administering generic state promotion and research programs.

(f) The Secretary's determination as to eligibility or certification of an organization shall be final.

Miscellaneous

§ 1216.80 Implementation of the Order.

The Order shall not become effective unless:

(a) The Secretary determines that the Order is consistent with and will effectuate the purposes of the Act; and

(b) The Order is approved by a simple majority of the peanut producers voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production of peanuts.

§ 1216.81 Suspension and termination.

(a) The Secretary shall suspend or terminate this subpart or a provision thereof if the Secretary finds that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) Every five years, the Secretary shall hold a referendum to determine whether peanut producers favor the continuation of the Order. The Secretary will also conduct a referendum if 10 percent or more of all eligible peanut producers request the Secretary to hold a referendum. In addition, the Secretary may hold a referendum at any time.

(c) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a simple majority of the producers voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production of peanuts.

(d) If, as a result of the referendum conducted under paragraph (b) of this section, the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1216.82 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than three of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all funds, property and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to the peanut producer organizations, certified pursuant to § 1216.70, in the interest of continuing peanut promotion, research, and information programs.

§ 1216.83 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder; or

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1216.84 Personal liability.

No member or alternate member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or alternate, except for acts of dishonesty or willful misconduct.

§ 1216.85 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1216.86 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1216.87 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government as represented by the Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and

audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1216.82 shall apply to determine disposition of all such property.

Dated: November 2, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–29729 Filed 11–5–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[FV–98–703–PR]

Peanut Promotion, Research, and Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Peanut Promotion, Research, and Information Order (Order) is favored by a majority of the producers voting in the referendum. These procedures would also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The proposed Order is being published in a separate document. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act). In addition, in accordance with the Paperwork Reduction Act of 1995 (PRA), this proposed rule specifies the public reporting burden for the collection of information involved in conducting the referendum.

DATES: Comments must be received by January 5, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda__e__farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at: www.ams.usda.gov/fv/rpdocketlist.htm. Pursuant to the Paperwork Reduction Act of 1995 (PRA), also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Angela C. Snyder, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0244; telephone (910) 860–4689 or facsimile (202) 205–2800.

SUPPLEMENTARY INFORMATION: A referendum would be conducted among eligible peanut producers to determine whether the issuance of the proposed Peanut Promotion, Research, and Information Order (Order) (7 CFR Part 1216) is favored by a majority of persons voting in the referendum. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) (Pub. L. 104–427, 7 U.S.C. 7401–7425). A proposed Order is being published separately in the **Federal Register**.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to the order may file a petition with the Secretary of Agriculture (Secretary) stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not established in accordance with the law, and requesting a modification of the order or an exemption from the order. Any petition filed challenging the order, any provision of the order or any obligation imposed in connection with the order, shall be filed within two years after the effective date of the order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Executive Order 12866

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

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The Act, which authorizes the Secretary to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the Act provides three options for determining industry approval of a new research and promotion program: (1) by a majority of those voting; (2) by a majority of the volume of the agricultural commodity voted in the referendum; or (3) by a majority of those persons voting who also represent a majority of the volume of the agricultural commodity voted in the referendum. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. The American Farm Bureau Federation (proponent) has recommended that the Secretary conduct a referendum in which the Order must be approved by a majority of those persons voting. The proponent also has recommended that a referendum be conducted prior to the proposed Order going into effect.

This proposed rule would establish the procedures under which producers may vote on whether they want a

peanut promotion, research, and information program to be implemented. This proposal would add a new subpart which establishes procedures to conduct an initial and future referenda. The proposed subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 25,000 producers and 57 handlers of peanuts who would be subject to the program. Most producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR § 121.601], and most of the handlers would not be classified as small businesses. The SBA defines small agricultural handlers as those whose annual receipts are less than $5 million, and small agricultural producers are defined as those having annual receipts of not more than $500,000 annually.

According to USDA's National Agricultural Statistics Service (NASS), the nine major peanut-producing states in the United States account for 99 percent of the peanuts grown in this country. The combined production from these states totaled 3.5 billion pounds in 1997. NASS reports that Georgia was the largest producer (38 percent of the total), followed by Texas (23 percent), Alabama (11 percent), North Carolina (9 percent), Florida (6 percent), Virginia (5 percent), Oklahoma (5 percent), New Mexico (1 percent), and South Carolina (1 percent). The farm value of peanuts in 1997 reached $932 million. According to 1992 Census of Agriculture (Census) data, small amounts of peanuts were also grown in seven other states.

According to the proponent, and based on the Census for these nine states, 36 percent of the peanut-producing counties in the United States had 35 percent or more of their total crop income from peanuts. Twenty-four percent of the counties had 50 percent or more of their crop income from peanuts. From a state perspective, 70 percent of the crop income in Alabama's peanut-producing counties is generated from peanuts. For Virginia, the percentage is 48 percent. In addition, 16,194 farms harvested peanuts in 1992. Of these, 15,914 were located in the nine primary peanut-producing states.

Three main types of peanuts are grown in the United States: Florunners, Virginia, and Spanish. The southeast growing region grows mostly the medium-kernel Runner peanuts. The southwest growing region used to grow two-thirds Spanish and one-third Runner peanuts, but now more Runners than Spanish are grown. Virtually all of the Spanish peanut production is in Oklahoma and Texas. In the Virginia-Carolina region, mainly large-kernel Virginia peanuts are grown. New Mexico grows a fourth type of peanut, the Valencia.

Peanut manufacturers produce three principal peanut products: peanut butter, packaged nuts (including salted, unsalted, flavored, and honey-roasted nuts), and peanut candies. In most years, half of all peanuts produced in the United States for edible purposes are used to manufacture peanut butter. Packaged nuts account for almost one-third of all processed peanuts. Some of these (commonly referred to as ''ballpark'' peanuts) are roasted in the shell, while a much larger quantity is used as shelled peanuts packed as dry-roasted peanuts, salted peanuts, and salted mixed nuts. Some peanuts are ground to produce peanut granules and flour. Other peanuts are crushed to produce oil.

According to USDA's Foreign Agricultural Service, exports of U.S. peanuts (including peanut meal, oil, and peanut butter) totaled 880 million inshell equivalent pounds in 1997, with a value of $285 million (U.S. point of departure for the foreign country). Of the total quantity, 60 percent was shelled peanuts used as nuts, 11 percent was blanched or otherwise prepared or preserved peanuts, 10 percent was inshell peanuts, 7 percent was peanut butter, 4 percent was shelled oil stock peanuts, 4 percent was crude peanut oil, and 3 percent was refined peanut oil.

The major destinations for domestic shelled peanuts for use as nuts are Canada, Mexico, the United Kingdom, and the Netherlands. Blanched or otherwise prepared peanuts are sent mainly to Western Europe, especially the Netherlands, France, and Spain. Inshell peanuts are mainly exported to Canada and various countries in Western Europe. Peanut butter is sent to many countries, with the largest amounts going to Canada and Saudi Arabia. Peanut oil and oil stock peanuts are exported world-wide, but major destinations can vary from year to year.

Approximately 250 million inshell equivalent pounds of peanuts and processed peanuts (including oil and peanut butter) were imported in 1997 with a combined value (f.o.b. country of origin) of $73 million. Most of the imports (45 percent) were shelled peanuts for use as nuts. The major U.S. supplier is Argentina, but several other countries export shelled peanuts to the United States, including Mexico, Nicaragua, and South Africa.

Peanut butter imports are also significant and accounted for about 32 percent of the total quantity of nuts (inshell basis) imported in 1997. Most peanut butter imports come from Canada and Argentina. The other major import category—crude and refined peanut oil—are shipped mainly from Argentina and Nicaragua and account for approximately 18 percent of total imports (inshell equivalent basis). Inshell peanuts, primarily from Mexico, accounted for nearly 3 percent of total imports in 1997. About 3 percent of total imports consisted of blanched or other processed peanuts, mainly from China. Imports of oil stock shelled peanuts were negligible.

Most peanuts produced in other countries are crushed for oil and protein meal. The United States is the main producer of peanuts used in such edible products as peanut butter, roasted peanuts, and peanut candies. Peanuts are one of the world's principal oilseeds, ranking fourth behind soybeans, cottonseed, and rapeseed. India and China usually account for half of the world's peanut production.

According to ''The Agriculture Statistics Report'' published by USDA, during the 1995–96 season, the average annual production per domestic producer was approximately 144,228 pounds of peanuts. Peanuts produced during these growing seasons provided average annual gross sales of $42,222 per peanut producer. The value of the 1995–96 crop was approximately $1.013 billion. During the same period, per capita consumption in the United States was 5.7 pounds of peanuts.

This proposed rule provides the procedures under which peanut producers may vote on whether they want the Order to be implemented. In accordance with the provisions of the Act, subsequent referenda may be conducted, and it is anticipated that the proposed procedures would apply. There are approximately 25,000 producers who will be eligible to vote in the first referendum.

USDA will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process, so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if producers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this proposed rule are designed to minimize the burden on producers. This rule provides for a ballot to be used by eligible producers in voting in the referendum. The estimated annual cost of providing the information by an estimated 25,000 producers would be $12,500 or $0.50 per producer.

The Secretary considered requiring eligible voters to vote in person at various USDA offices across the country. The Secretary also considered electronic voting, but the use of computers is not universal, current technology is not reliable enough to ensure that electronic ballots would be received in a readable format, and technology is insufficient at this time to provide sufficient safeguards of voters' confidentiality. Conducting the referendum from one central location by mail ballot would be more cost-effective and reliable. The Department will also accept ballots sent by facsimile (fax) machine. A pilot of this method was conducted during a recent referendum for another program. A fax machine was dedicated to the receipt of ballots. All ballots received in this manner were stored in the memory of the machine until the end of the voting period. Due to the large number of voters expected in the referendum on the proposed peanut program, USDA may use more than one such machine, providing voters in different states with different fax numbers in order to avoid exceeding the memory of the machine. Further, the Department would provide easy access to information for potential voters through a toll-free telephone line.

While other peanut programs have been implemented by the government, USDA has not identified any relevant federal rules that duplicate, overlap, or conflict with this rule.

We have preformed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. However, in order to obtain all of the data necessary for a comprehensive analysis, we invite comments concerning the potential effects of this proposed rule. In particular, we are interested in obtaining more information on the number of small entities that may incur benefits or costs from the implementation of this proposed rule and information on the expected benefits or costs.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: November 30, 2000.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act. The burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each producer.

Respondents: Producers.

Estimated Number of Respondents: 25,000.

Estimated Number of Responses per Respondent: 1 every 5 years (0.2).

Estimated Total Annual Burden on Respondents: 1,250 hours.

The estimated annual cost of providing the information by an estimated 25,000 producers would be $12,500 or $0.50 per producer.

The ballot will be added to the other information collections approved for use under OMB Number 0581–0093.

Comments are invited on: (a) Whether the proposed collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–0093, the docket number, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames specified above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

The Act authorizes the Secretary, under generic authority, to establish agricultural commodity research and promotion orders. The American Farm Bureau Federation (proponent), working in cooperation with 20 state and regional industry organizations from the peanut-producing states, has requested the establishment of a Peanut Promotion, Research, and Information Order (Order) pursuant to the Act. The proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and information for peanuts. The program would be funded by an assessment levied on producers (to be collected by handlers) at a rate of 1 percent of the total value of all farmers stock peanuts. When peanuts are placed under loan, a deduction from the producer's loan draft equal to 1 percent of the price support value would be made and submitted to the Board by an area marketing association. Once peanuts are sold for disposition from a loan, the association would remit the balance of the assessment to the Board. In the proposed Order, peanuts are defined as the seeds of the legume *arachis hypogaea,* including both inshell and shelled peanuts other than those marketed by the producer in green form for consumption as boiled peanuts.

Assessments would be used to pay for promotion, research, and consumer information; administration, maintenance, and functioning of the Board; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

Section 518 of the Act requires that a referendum be conducted among eligible peanut producers to determine whether they favor the Order. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. According to a proposed rule that is published separately in this issue of the **Federal Register**, the Order would become effective if it is approved by a majority of producers voting in the referendum,

which will be held before the program is implemented.

This proposed rule establishes the procedures under which producers may vote on whether they want the peanut promotion, research, and information program to be implemented. There are approximately 25,000 eligible voters.

This proposed rule would add a new subpart which would establish procedures to be used in this and future referenda. The subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

All written comments received in response to this rule by the date specified will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for the peanut industry. We also encourage the industry to comment on whether it has considered the impact of disaster transfers on the assessment process, whether peanuts under those transfers would be considered quota or additional peanuts.

List of Subjects in 7 CFR Part 1216

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Peanut promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

1. Subpart B is added to proposed Part 1216 to read as follows:

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

* * * * *

Subpart B—Procedure for the Conduct of Referenda in Connection with the Peanut Promotion, Research, and Information Order

Sec.

Authority: 7 U.S.C. 7401–7425.

Subpart B—Procedure for the Conduct of Referenda in Connection With the Peanut Promotion, Research, and Information Order

§ 1216.100 General.

Referenda to determine whether eligible peanut producers favor the issuance, amendment, suspension, or termination of the proposed Peanut Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1216.101 Definitions.

Unless otherwise defined in this section, the definition of terms used in these procedures shall have the same meaning as the definitions in the Order.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Order* means the Peanut Promotion, Research, and Information Order.

(c) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a peanut farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(f) *Eligible producer* means any person who is engaged in the production and sale of peanuts in the United States and who:

(1) Owns, or shares the ownership and risk of loss of, the crop. This does not include quota holders who do not share in the risk of loss of the crop;

(2) Rents peanut production facilities and equipment resulting in the ownership of all or a portion of the peanuts produced;

(3) Owns peanut production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the peanuts produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce peanuts who share the risk of loss and receive a share of the peanuts produced. No other acquisition of legal title to peanuts shall be deemed to result in persons becoming eligible producers.

§ 1216.102 Voting.

(a) Each person who is an eligible producer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce peanuts, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer, or an administrator, executor, or trustee or an eligible producing entity may cast a ballot on behalf of such producer. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer, or an administrator, executive, or trustee of an eligible producing entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail or by facsimile, as instructed by the Secretary.

§ 1216.103 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1216.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1216.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1216.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1216.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

Dated: November 2, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc.98–29728 Filed 11–5–98; 8:45 am]

BILLING CODE 3410–02–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–40617; File No. S7–27–98]

RIN: 3235–AH48

Purchases of Certain Equity Securities by the Issuer and Others

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (Commission) (''Commission'') today is proposing for public comment an amendment to Rule 10b–18 (Rule) under the Securities Exchange Act of 1934 (Exchange Act). Rule 10b–18 provides a ''safe harbor'' from liability for manipulation under Sections 9(a)(2) and 10(b) of the Exchange Act, and Rule 10b–5 thereunder, when an issuer or affiliated purchaser of the issuer bids for or buys shares of its common stock in compliance with the Rule's conditions. In order to improve liquidity during severe market downturns, the proposal would amend the Rule's timing condition during the trading session immediately following a market-wide trading suspension. In particular, the safe harbor now would be available to an issuer that bids for or purchases its common stock either: from the reopening of trading until the close of trading on the same day as the imposition of the market-wide trading suspension; or at the next day's opening, if the market-wide trading suspension was in effect at the scheduled close of trading. The proposed safe harbor requires that the issuer continue to comply with the Rule 10b–18 conditions governing the manner, price and volume of market purchases of its common stock.

DATES: Comments should be submitted on or before December 7, 1998.

ADDRESSES: Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–27–98. All submissions will be made available for public inspection and copying at the Commission's Public Reference Room, Room 1024, 450 Fifth Street, NW, Washington DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: James A. Brigagliano, Assistant Director; Denise Landers, Attorney; and Jerome Roche, Attorney; Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, or at (202) 942–0772.

SUPPLEMENTARY INFORMATION:

I. Introduction

In response to a petition for rulemaking (Petition) [1] filed by the New York Stock Exchange, Inc. (NYSE), the Commission is proposing to amend Rule 10b–18 [2] to modify the timing condition during the trading session immediately following a market-wide trading suspension.[3] The proposal extends the safe harbor to Rule 10b–18 bids or Rule 10b–18 purchases [4] effected either: (i) from the reopening of trading until the close of trading immediately following, and on the same day as, a market-wide trading suspension; or (ii) at the next day's opening, if the market-wide trading suspension was in effect at the scheduled close of trading. At such times, an issuer or an affiliated purchaser of the issuer (affiliated

[1] The Petition was filed with the Commission on January 9, 1998 and is publicly available in File No. 4–409 in the Commission's Public Reference Room.

[2] 17 CFR 240.10b–18.

[3] The proposed amendment defines market-wide trading suspension as either: (i) A market-wide trading halt imposed pursuant to the rules of a national securities exchange or a registered national securities association in response to a market-wide decline during a single trading session; or (ii) a market-wide trading halt ordered by the Commission pursuant to section 12(k) of the Exchange Act. Proposed Rule 10b–18(a)(15). For example, the proposed alternative safe harbor would apply in the trading session following a trading halt pursuant to NYSE exchange rule 80B or Market Closing Policy of the National Association of Securities Dealers, Inc. (NASD). The Commission approved the NASD's market closing policy statement, codified in IM–4120–3. Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (Circuit Breaker Approval Order). The Commission notes that it has a standing request with the NASD that the NASD halt trading as quickly as practicable whenever the NYSE and other markets have suspended trading, which the NASD continues to honor. *See* Letter to Howard L. Kramer, Senior Associate Director, Office of Market Supervision, Division of Market Regulation, Commission, from Richard Ketchum, Chief Operating Officer and Executive Vice President, NASD, dated January 23, 1998.

[4] Rule 10b–18 bid is defined as a bid for securities that, if accepted, or a limit order to purchase securities, that if executed, would result in a Rule 10b–18 purchase. 17 CFR 240.10b–18(a)(4). A Rule 10b–18 purchase is defined as a purchase of common stock of an issuer by or for the issuer, with certain exceptions. 17 CFR 240.10b–18(a)(3).

purchaser)[5] would still also have to comply with the manner, price and volume conditions in Rule 10b–18 to satisfy the requirements of the safe harbor.

The NYSE Petition stated that it had surveyed floor brokers, upstairs traders and listed-company representatives. Those groups agreed that expanding the Rule 10b–18 safe harbor to issuer repurchases effected during the trading session following a severe market decline could offer an important source of liquidity and provide balance to selling activity. The Commission has previously noted that issuers repurchase their securities for many legitimate reasons and that those repurchases benefit shareholders and the marketplace by providing additional liquidity.[6] Based on these considerations, the Commission is publishing for public comment this proposed amendment to Rule 10b–18.

II. Rule 10b–18 Safe Harbor

Before Rule 10b–18 was adopted, issuers effecting repurchase programs were uncertain about their potential liability under the anti-manipulation provisions of the Exchange Act. Those provisions offer little practical guidance with respect to the scope of permissible issuer market activity.[7] Since 1967, the Commission has considered periodically whether, and how, to regulate an issuer's market repurchases of its securities.[8] The Commission determined that a safe harbor rule would prevent fraudulent, manipulative, and deceptive acts or practices by issuers and others without imposing unnecessarily complex and intrusive restrictions on issuer market repurchases.[9] Rule 10b–18 grants a safe harbor from liability for manipulation under Sections 9(a)(2) and 10(b), and Rule 10b–5, of the Exchange Act to an issuer in connection with bids for or purchases of its common stock that comply with the Rule's conditions. Because Rule 10b–18 is a safe harbor, compliance with the Rule's conditions is voluntary. Thus, issuer bids for or purchases of its common stock that do not comply with Rule 10b–18 are not necessarily manipulative.[10]

The Commission adopted safe harbor provisions both to ensure that the price of an issuer's repurchases would be set by independent market forces and to offer clear guidance concerning the scope of non-manipulative issuer repurchasing.[11] Rule 10b–18, therefore, sets out specific conditions that issuers must comply with while conducting stock repurchases.

- The *manner of purchase condition* requires an issuer to use a single broker or dealer on any given day to bid for or purchase its common stock.[12] The goal of this provision is to prevent an issuer from creating the appearance of widespread broker-dealer interest and trading activity in its security.
- The *timing condition* specifies that an issuer's purchase may not be the opening transaction reported to the consolidated transaction reporting system nor may purchases be made during the last half-hour before the scheduled close of trading.[13] Because they tend to forecast the direction of trading and suggest the strength of demand, purchases effected at the opening or close of trading are generally considered to be a significant indication of the current market value of the security. The Rule excludes opening bids and purchases to prevent the issuer from setting the character of the day's trading. The Rule similarly excludes bids and purchases near or at the close of trading to prevent the issuer from influencing the closing price for its security.
- The *price condition* specifies the highest price an issuer may bid or pay for its common stock.[14] Because the price condition generally limits the issuer to bidding for or buying its security at a price that is no higher than the current independent published bid or last independent transaction price, it ensures that the issuer would not lead the market for its security through its repurchases.
- The *volume condition* is designed to prevent an issuer from dominating the market for its securities through substantial purchasing activity. Generally, the issuer may effect daily purchases up to 25 percent of the trading volume in its shares.[15] Block purchases are excepted from the volume condition, although all other Rule 10b–18 conditions apply to block purchases.[16] Therefore, an issuer may purchase one or more blocks as long as its non-block purchases amount to no more than 25 percent of the security's trading volume.

III. NYSE Petition and Proposed Amendment to Rule 10b–18

The Commission recently approved a NYSE proposal to amend its rule establishing ''circuit breakers.'' [17] Circuit breakers are coordinated market-wide trading halts that are intended to avoid systemic breakdown when a severe one-day market drop interferes with the orderly operation of the financial markets.[18] The new circuit

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[5] The safe harbor is also available for affiliates of the issuer (affiliated purchasers). References to ''issuer'' in this release include affiliated purchasers.

[6] Securities Exchange Act Release No. 19244 (Nov. 17, 1982), 47 FR 53333 (Nov. 26, 1982) (Adopting Release).

[7] *Id.*

[8] The Commission first proposed Rule 10b–10 to govern issuer repurchases in connection with proposed legislation that became the Williams Act Amendments of 1968. Pub. L. No. 90–439, 82 Stat. 454 (July 29, 1968), reprinted in Hearings on S. 510 before Senate Committee on Banking and Currency, 90th Cong., 1st Sess. 214–216 (1967). The Commission then published for public comment proposed Rule 13e–2 in 1970, 1973 and 1980, a proscriptive rule that would have imposed disclosure requirements, purchasing limitations and general antifraud liability. Securities Exchange Act Release Nos. 8930 (July 13, 1970), 35 FR 11410 (July 16, 1970); 10539 (Dec. 6, 1973), 38 FR 34341 (Dec. 13, 1973); and 17222 (Oct. 17, 1980), 45 FR 70890 (Oct. 27, 1980).

[9] Adopting Release, *supra* note 6, at 53334.

[10] 17 CFR 240.10b–18(c).

[11] Adopting Release, *supra* note 6, at 53334. Some conduct that meets the safe harbor requirement of Rule 10b–18 may still violate the anti-fraud provisions of the Exchange Act. For example, as the Commission noted in 1982 when adopting Rule 10b–18, ''Rule 10b–18 confers no immunity from possible Rule 10b–5 liability where the issuer engages in repurchases while in possession of favorable, material nonpublic information concerning its securities.'' *Id.*, n. 5.

[12] 17 CFR 240.10b–18(b)(1). This manner condition applies only to Rule 10b–18 bids or Rule 10b–18 purchases solicited by or on behalf of the issuer.

[13] 17 CFR 240.10b–18(b)(2).

[14] 17 CFR 240.10b–18(b)(3). The price limitation varies on whether the security is a reported, exchange-traded, Nasdaq or other security, and whether the bid or purchase is effected on an exchange. *Id.*

[15] For nonreported securities, volume may not exceed one round lot on a single day or on such day plus the five preceding days, ½oth of the percent of outside shares. 17 CFR 240.10b–18(b)(4). Trading volume is defined generally as the average daily trading volume reported to the consolidated transaction reporting system or to the NASD for the security in the four calendar weeks preceding the week that the Rule 10b–18 purchase or bid is to be effected. 17 CFR 240.10b–18(a)(11).

[16] Block is defined as a quantity of stock that either: (i) has a purchase price of $200,000 or more; or (ii) is at least 5,000 shares and has a purchase price of at least $50,000; or (iii) is at least 20 round lots of the security and totals 150 percent or more of the trading volume for that security or, in the event that trading volume data are unavailable, is at least 20 round lots of the security and totals at least one-tenth of one percent (0.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate. Block does not include any amount a broker or dealer, acting as principal, has accumulated for the purpose of selling to the issuer or affiliated purchaser, if the issuer or affiliated purchaser knows or has reason to know that such amount was accumulated for such purpose, nor does it include any amount that a broker or dealer has sold short to the issuer, if the issuer or affiliated purchaser knows or has reason to know that the sale was a short sale. 17 CFR 240.10b–18(a)(14).

[17] *See* Circuit Breaker Approval Order *supra* note 3. (Order approving circuit breakers for rules governing market-wide trading halts on the NYSE, American Stock Exchange, Boston Stock Exchange, Chicago Stock Exchange, NASD, and Philadelphia Stock Exchange.

[18] *Id.*

breaker rule sets trigger values representing a one-day decline in the Dow Jones Industrial Average (DJIA) of 10%, 20%, and 30%. It also modifies the duration of the market-wide trading halt depending on when the circuit breaker is triggered.[19] Given the new trigger values, these circuit breakers would rarely be triggered, and only during significant market declines when liquidity may evaporate. In conjunction with the new circuit breaker rules, the NYSE asked the Commission to expand the Rule 10b–18 timing condition to permit issuers to bid for or purchase its security either: (1) At the reopening of trading on the same day as the trading halt, and during the half hour prior to the scheduled close of trading of such trading session; or (2) at the next day's opening, if the market-wide trading halt is in effect at the scheduled close of trading. The Petition did not propose to change the other Rule 10b–18 conditions.[20]

The NYSE acknowledged that Rule 10b–18 is neither mandatory nor the exclusive means for an issuer to make repurchases without manipulating the market price of its securities. However, it noted that in practice many issuers are reluctant to undertake repurchases without the certainty that their bids or purchases fall within the Rule 10b–18 safe harbor. The NYSE highlighted the need for liquidity in the period following a significant market decline, and suggested that issuer repurchases offer a source of liquidity that could ease the stress of volatile markets. In October 1987 and October 1997, the markets experienced severe declines. At those times, numerous issuers sought our guidance on the applicability of Rule 10b–18 in the following trading session. The events following those market breaks underscore the significant role of issuer repurchases in enhancing liquidity during extreme market downturns and the need to clearly communicate the applicability of Rule 10b–18 during such periods.[21]

When the Commission adopted Rule 10b–18, it recognized that issuers rarely buy back their securities with improper intent, but rather generally conduct repurchase programs for legitimate business reasons. The Commission also acknowledged the benefit of offering clear guidance and certainty to issuers and broker-dealers concerning permissible market activity when repurchasing their stock. The Rule 10b–18 safe harbor allows issuers and their broker-dealer agents to bid for and purchase their common stock within the Rule's conditions and thereby avoid the substantial and unpredictable risks of liability under the general anti-manipulation provisions of the Exchange Act. With an expanded safe harbor during the trading session following a market break, issuers may be encouraged to participate in reestablishing equilibrium between buying and selling interests. Under the proposal, the safe harbor would also be available in the trading session following a market-wide trading suspension declared pursuant to a Commission emergency order.[22]

The Commission weighed its concerns about potential manipulative activity by issuers against the benefits of facilitating short-term liquidity during periods of severe market turbulence. We found that the balance tips in favor of enhanced liquidity. Thus, we are publishing for public comment the amendment to Rule 10b–18 substantially as proposed by the NYSE. Rule 10b–18 would continue to state that no presumption of manipulation arises for issuer purchases of its securities made outside the Rule 10b–18 conditions.[23]

IV. Request for Public Comment

The Commission seeks comment generally on adopting the proposal. The Commission asks commenters to address whether the proposed amendment provides appropriate safe harbor conditions for issuers and affiliated purchasers in times of severe market downturns. The Commission seeks comment on whether there are any risks of manipulation that this proposal may raise. Commenters may also wish to discuss whether there are any legal or policy reasons why the Commission should consider a different approach.[24] For instance, should volume limits also be relaxed and/or should specific disclosure of issuer repurchases be required? Further, should the time of purchase condition under the proposed safe harbor be broader, narrower, or include different parameters? The Commission encourages commenters to provide information regarding the functioning of secondary markets during periods of market volatility, the roles of market participants, and the advantages and disadvantages of the proposed amendments. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also requests information regarding the potential impact of the proposed amendment on the economy on an annual basis. If possible, commenters should provide empirical data to support their views. Comments should be submitted by December 7, 1998.

V. Costs and Benefits of the Proposed Amendments

The Commission has identified certain costs and benefits relating to the proposals, which are discussed below, and encourages commenters to discuss any additional costs or benefits. In particular, the Commission requests comment on the potential costs for any necessary modifications to information gathering, management, and record-keeping systems or procedures, as well as any potential benefits resulting from the proposals for issuers, investors, broker-dealers, securities industry professionals, regulators or others. Commenters should provide analysis and data to support their views on the costs and benefits associated with the proposals.

A. Benefits

The Commission preliminarily believes that the proposed amendments generally would help improve the liquidity of markets for equity securities following a market-wide trading suspension. Securities sellers would benefit from improved liquidity while issuers could buy shares at relatively low prices. We preliminarily believe that the specific benefits set forth below

[19] *Id.* NYSE Rule 80B governs the imposition of trading halts on the NYSE due to extraordinary market volatility. Rule 80B provides both the trigger values (circuit breakers) for trading halts on the NYSE, which are expressed as a decline in the DJIA from the closing value on the previous trading day, and the duration of the trading halt for each circuit breaker. The circuit breakers contained in Rule 80B have been coordinated with: (i) All other U.S. stock exchanges and the National Association of Securities Dealers with respect to trading of stocks, stock options, and stock index options; and (ii) all U.S. futures exchanges with respect to the trading of stock index futures and options on such futures, so that all such markets would cease trading when a circuit breaker is triggered by a decline in the DJIA.

[20] *See* Petition, *supra* note 1.

[21] *See*, ''Bargain-Shopping Through Buybacks'', *New York Times*, August 6, 1998, p. D 6.

[22] Section 12(k) of the Exchange Act gives the Commission special authority to respond to market disruptions and extreme market volatility that could result from a variety of contingencies. Section 12(k)(1)(B) authorizes the Commission summarily to suspend all trading in the markets, for up to ninety calendar days when such suspension is required by the public interest and for the protection of investors. The Commission has never invoked this provision of section 12(k).

[23] The proposed alternative safe harbor conditions would be codified in Rule 10b–18(c); and current paragraph (c) would be amended and redesignated as paragraph (d).

[24] Additionally, the Commission expects to consider broad revisions to Rule 10b–18 in the near future, covering the manner, timing, price and volume conditions in Rule 10b–18 and seeks comment on Rule 10b–18 generally.

would flow from the proposed amendments.

The Commission preliminarily believes that the proposal will facilitate trading in the issuer's securities by reducing issuer reluctance to purchase in response to sell-side order imbalances that may occur during periods of severe market declines. The proposed amendments, by extending the safe harbor, may encourage issuers to purchase their securities at a time when other market participants may be unable or unwilling to do so. We preliminarily believe that extending the safe harbor to issuers under the conditions following a market-wide trading suspension will improve the liquidity of markets in the issuer's securities. The Commission requests data and analysis on what effect the proposed changes may have on the liquidity of these markets.

The proposed safe harbor also provides clarity as to the scope of permissible market activity for issuers and the broker-dealers that assist issuers in their stock repurchases. If an issuer effects its repurchases in compliance with the conditions of Rule 10b-18, it will avoid what might otherwise be substantial and unpredictable risks of liability under the anti-manipulative provisions of the Exchange Act.

The Commission does not have data to quantify the value of the benefits described above. The Commission seeks comments on how it may quantify these benefits and any other benefits, not already identified, that may result from the adoption of these proposed amendments.

B. Costs

The Commission notes that the costs related to complying with Rule 10b-18, and the proposed amendment, are assumed voluntarily because the rule provides an optional rather than mandatory safe harbor that issuers may use for purchasing their securities.

The Rule implicitly requires an issuer seeking to avail itself of the safe harbor to collect information regarding the manner, timing, price, and volume of its purchases of the issuer's common stock, on a transaction by transaction basis, in order to verify compliance with the Rule's safe harbor conditions. We estimate that each year there are approximately 1,455 issuers effecting 1,730 share repurchase programs; or, on average, 1.2 repurchase programs per issuer, in accordance with Rule 10b-18.[25] For each such repurchase program, an issuer spends an average of approximately 8 hours collecting the requisite information, for a total burden of 13,840 burden hours. We estimate that each issuer spends $670 per repurchase program to comply with the safe harbor requirements.[26] We have no way of estimating the average number of market-wide trading halts per year or the number of issuers that would avail themselves of the safe harbor in the subsequent trading session. With regard to issuer repurchases permitted under the proposed amendment to Rule 10b-18, the Commission anticipates that the triggering of a market-wide trading suspension would occur infrequently. However, the Commission estimates that, if one market-wide trading suspension occurs each year, each issuer would incur an additional burden of 1 hour for a cost, per issuer, of approximately $83.75.[27]

The Commission seeks comments, data and analysis on the cost estimates identified in this section and comments on any cost, not already identified, on the proposed amendment.

VI. Effects on Efficiency, Competition, and Capital Formation

In adopting rules under the Exchange Act, section 23(a)(2) requires the Commission to consider the impact any rule would have on competition. Further, the law requires that the Commission not adopt any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act requires the Commission, when engaged in rulemaking, and when considering the public interest, to consider whether the action would promote efficiency, competition, and capital formation.[28]

The Commission preliminarily believes that the safe harbor should improve market efficiency by providing additional purchasers, namely issuers, during a time of selling order imbalance. That effect could enhance market liquidity following a market-wide trading suspension.

The Commission's preliminary view is that the proposed amendment to the Rule 10b-18 would not have any anticompetitive effect because it would apply equally to all issuers and the safe harbor would only be triggered in extremely rare circumstances. Further, an issuer currently is able to purchase its shares outside the Rule 10b-18 safe harbor conditions without raising a presumption of manipulation.

The Commission requests comments on the effect on competition that may result to issuers under the proposed amendments to the Rule. Finally, the Commission seeks comment on what impact the proposals, if adopted, would have on efficiency and capital formation.

VII. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA)[29] regarding the proposed amendments to Rule 10b-18.

A. Reasons for the Proposed Action

On January 9, 1998, the NYSE filed a petition for rulemaking with the Commission pursuant to Rule 192 of the Commission's Rules of Practice.[30] The NYSE requested that the Commission initiate rulemaking proceedings to amend Rule 10b-18 to include in its safe harbor bids and purchases made following a market-wide trading suspension: (1) at the reopening on the day of the market-wide trading suspension; (2) during the half-hour prior to the scheduled close of trading on the day of the trading suspension; and (3) at the next day's opening if the market-wide trading suspension is in effect at the scheduled close of trading. The proposed conditions adjust the Rule's time of purchase condition but also provide that the issuer must continue to comply with the other Rule 10b-18 conditions governing the manner, price and volume of market purchases of its common stock.

B. Objectives

The proposed amendments will allow issuers who otherwise comply with the current Rule 10b-18 safe harbor conditions governing manner, price and volume to use the proposed timing condition during the trading session following an emergency market-wide trading suspension. The events following the market breaks in October 1987 and October 1997 have underscored the significant role of issuer repurchases during market

[25] The Commission estimates that 1,225 issuers effect single repurchase programs while 230 issuers effect multiple repurchase programs.

[26] The estimated average cost of $670 to comply with the requirements of the safe harbor is composed of $96 for collection of information by an issuer (4 hours at $24 per hour), $400 for review of the information (4 hours at $100 per hour), and $174 for printing, supplies, and copying (approximately 35% of the total labor costs). The Commission estimates overhead based on 35% of total labor costs based on the *GSA Guide to Estimating Reporting Costs* (1973).

[27] The estimated total average burden per issuer is 8 burden hours per repurchase program. The estimated additional cost of $83.75 per issuer is calculated from each issuer effecting an average of 1 repurchase program per year at a cost of $670 per repurchase program divided by 8 hours.

[28] 15 U.S.C. 78c(f).

[29] 5 U.S.C. § 603.

[30] *See* Petition, *supra* note 1.

downturns and the need for clarity as to the applicability of Rule 10b-18 in periods of extreme market downturns. On those occasions, issuer repurchases provided an important source of liquidity that helped ease market stress. The proposal, by modifying the safe harbor's timing condition during the trading session following a market break, may improve liquidity and facilitate market participants' ability to reestablish equilibrium between buying and selling interests.

C. Legal Basis

The amendments to Rule 10b-18 are proposed pursuant to the authority set forth in Sections 9(a)(2) and 10(b) of the Securities Exchange Act of 1934.[31]

D. Small Entities Subject to the Rule

The proposed amendments may affect those small entity issuers and affiliated purchasers that wish to avail themselves of the safe harbor provisions with the conditions following a market-wide trading suspension. Based on Exchange Act Rule 0–10(a), a small issuer is one that on the last day of its most recent fiscal year had total assets of $5,000,000 or less. The Commission estimates that approximately 1,450 issuers will avail themselves of the safe harbor each year, of which about 10 may be considered small entities. The Commission seeks comment on the number of issuers engaged in market repurchases of its stock and the number of such issuers that are small entities.

E. Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments would not impose any new reporting, recordkeeping, or other compliance requirements.

F. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with, the proposed amendments.

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small issuers and broker-dealers. In connection with the proposed rule, the Commission considered the following alternatives: (a) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for small entities.

With respect to the proposed amendments, the Commission believes that the establishment of different requirements for small entities is neither necessary nor practicable, because the proposal provides voluntary safe harbor from liability for manipulation under the Exchange Act. The proposed rule should not adversely affect small entities because it does not impose any new reporting, recordkeeping or compliance requirements. Therefore, it is not feasible to further clarify, consolidate or simplify the rule for small entities.

H. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this IRFA. The Commission specifically requests comments on the number of issuers conducting repurchase programs and the number of such issuers that are small entities. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–27–98; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

VIII. Paperwork Reduction Act

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA);[32] the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: ''Purchases of certain equity securities by the issuer and others.'' This collection of information has previously been assigned OMB Control No. 3235–0474.

Rule 10b–18 provides that an issuer or any affiliated purchaser of an issuer will not incur liability under Sections 9(a)(2) and 10(b) of the Exchange Act, or Rule 10b–5 under the Exchange Act if its purchases of the issuer's common stock are made in compliance with the manner, timing, price, and volume limitations of the rule. The proposed amendments to the Rule provide conditions to the safe harbor applicable during the trading session following a market-wide trading suspension. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

The Rule implicitly requires an issuer or an affiliated purchaser seeking to avail itself of the safe harbor to collect information regarding the manner, time, price and volume of its purchases of the issuer's common stock, on a transaction by transaction basis, in order to verify compliance with the rule's safe harbor conditions. The Commission estimates that each year there are approximately 1,455 issuers effecting 1,730 share repurchase programs, or on average 1.2 repurchase programs per issuer per year, in accordance with Rule 10b–18 safe harbor. For each such repurchase program, an issuer spends an average of approximately 8 hours collecting the requisite information, for a total burden of 13,840 burden hours.[33] With regard to issuer repurchases permitted under the proposed amendment to Rule 10b–18, the Commission anticipates that the triggering of a market-wide trading suspension would occur infrequently. However, for purposes of the PRA, if we assume that, at most, one market-wide trading suspension occurs each year, each issuer would incur an additional burden of 1 hour for a cost per issuer of approximately $83.75.[34] If 1,455 issuers engage in repurchases following a market-wide trading halt and comply with the safe harbor, then collectively these issuers would incur an additional 1,455 burden hours.

The issuer's decision to effect purchases of its common stock within the safe harbor is voluntary. All records required to be preserved are considered confidential and are not available to the

[31] 15 U.S.C. § § 78i(a)(2), 78j(b).

[32] 44 U.S.C. § 3501 *et seq.*

[33] This represents 1,730 repurchase programs requiring 8 burden hours for compliance.

[34] This number was dervied by dividing the estimated average cost of $670 per issuer per repurchase program to comply with the safe harbor requirements by 8 hours. *See, supra* note 26.

public. All records required under the proposed amendments to Rule 10b–18 would be preserved for not less than 3 years, the first 2 years in an easily accessible place.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(i) Evaluate whether the proposed information collection is necessary for the proper performance of the agency's functions, including whether the information shall have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected;

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549 with reference to File No. S7–27–98. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

IX. Statutory Basis and Text of Proposed Amendment

The rule amendment is being proposed pursuant to Sections 2, 3, 9(a)(6), 10(b), 13(e), 15(c) and 23(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(b), 78m(e), 78o(c) and 78w(a).

List of Subjects in 17 CFR Part 240

Broker-dealers, Issuers, Securities.

For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation to Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.10b–18 is amended by adding paragraphs (a)(15) and (d) and revising paragraph (c) to read as follows:

§ 240.10b–18 Purchases of certain equity securities by the issuer and others.

(a) *Definitions.* * * *

(15) The term *market-wide trading suspension* means either:

(i) A market-wide trading halt imposed pursuant to the rules of a national securities exchange or a registered national securities association, in response to a market-wide decline during a single trading session; or

(ii) A market-wide trading suspension ordered by the Commission pursuant to Section 12(k) of the Act, 15 U.S.C. 78*l*(k).

* * * * *

(c) *Conditions following a market-wide trading suspension.*

(1) The conditions of paragraph (b) of this section shall apply in connection with a Rule 10b–18 bid or a Rule 10b–18 purchase effected during a trading session following the termination of a market-wide trading suspension, except that the time of purchase condition in paragraph (b)(2) of this section shall not apply, either:

(i) From the reopening of trading until the scheduled close of trading; or

(ii) At the opening of trading on the next trading day, if a market-wide trading suspension is in effect at the scheduled close of a trading session.

(d) No presumption shall arise that an issuer or affiliated purchaser of an issuer has violated the anti-manipulation provisions of sections 9(a)(2) or 10(b) of the Act, 15 U.S.C. 78i(a)(2) or 78j(b), or § 240.10b–5, if the Rule 10b–18 bids or Rule 10b–18 purchases of such issuer or affiliated purchaser do not meet the conditions specified in paragraph (b) or (c) of this section.

* * * * *

By the Commission.

Dated: October 29, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–29510 Filed 11–5–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 153, 157, and 375

[Docket No. RM98–16–000]

Collaborative Procedures for Energy Facilities Applications; Notice of Technical Conferences

October 30, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Technical Conferences.

SUMMARY: The Federal Energy Regulatory Commission (Commission) intends to hold staff technical conferences to discuss the proposed pre-filing collaborative process.

DATES: Conference will be held at 9:00 a.m. on November 10, 1998, in Houston, Texas and at 9:00 a.m. on November 18, 1998, in Chicago, Illinois.

ADDRESSES: Conference locations are as follows:

Houston Airport Marriott, 18700 Kennedy Boulevard, Houston, Texas

Chicago Marriott Downtown, 540 North Michigan Avenue, Chicago, Illinois

FOR FURTHER INFORMATION CONTACT:

Thomas Russo, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 219–2792

Berne Mosley, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–2256

Gordon Wagner, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 219–0122

Merrill Hathaway, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0825

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washhington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via

Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@FERC.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Federal Energy Regulatory Commission (Commission) is proposing to expand its procedural regulations governing the authorization of natural gas facilities and services, and is considering revising its procedural regulations governing applications for licenses for hydroelectric projects.[1] The proposed regulations are intended to offer prospective applicants seeking to construct, operate or abandon natural gas facilities or services the option, in appropriate circumstances and prior to filing an application, of using a collaborative process to resolve significant issues. In addition, a significant portion of the environmental review process could be completed as part of the pre-filing collaborative process. This pre-filing collaborative process is comparable to the process the Commission recently adopted with respect to applications for hydroelectric licenses, amendments and exemptions and, like those regulations, is optional and is designed to be adaptable to the facts and circumstances of the particular case. The proposed regulations would not delete or replace any existing regulations. Finally, the Commission is considering whether the existing collaborative process for hydroelectric license and exemption applications, as well as the proposed collaborative process for natural gas facilities and services, should be made mandatory.

Staff technical conferences will be held to provide an overview of the proposed pre-filing collaborative process and to respond to questions. Conferences will be held at 9:00 a.m. on November 10, 1998, at the Houston Airport Marriott, 18700 Kennedy Boulevard, Houston, Texas, and on November 18, 1998, at the Chicago Marriott Downtown, 540 North Michigan Avenue, Chicago, Illinois. These conferences are designed as workshops in which Commission staff will present information and respond to questions concerning the proposed collaborative process as an aid to assist participants in developing comments in response to and as requested in the September 30, 1998 Notice of Proposed Rulemaking. Accordingly, there will be no transcript and statements made in the context of the workshops will not become part of the record in this proceeding. All parties—particularly those with experience with collaborative processes, whether at this agency or in another context—are invited to attend.

David P. Boergers,

Secretary.

[FR Doc. 98–29590 Filed 11–5–98; 8:45 am]

BILLING CODE 6717–01–M

[1] *See* 84 FERC ¶ 61,346 (September 30, 1998).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 880

[Docket No. 98N–0786]

General Hospital and Personal Use Devices: Proposed Classification of Liquid Chemical Sterilants and General Purpose Disinfectants

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify both liquid chemical sterilants intended for use as the terminal step in processing critical and semicritical medical devices prior to patient use, and general purpose disinfectants intended to process noncritical medical devices and equipment surfaces. Under the proposal, liquid chemical sterilants would be classified into class II (special controls) and general purpose disinfectants would be classified into class I (general controls). FDA also proposes to exempt general purpose disinfectants from the premarket notification requirements. The agency is publishing in this document the recommendations of the General Hospital and Personal Use Devices Panel (the Panel) regarding the classification of these devices. After considering public comments on the proposed classification, FDA will publish a final regulation classifying these devices. This action is being taken to establish sufficient regulatory controls that will provide reasonable assurance of the safety and effectiveness of these devices.

DATES: Written comments by February 4, 1999.

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: Chiu S. Lin, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8913.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Devices Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629), and the Food and Drug Administration Modernization Act of 1997 (the FDAMA) (Pub. L. 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1)

Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by the FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(I) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval. Consistent with the act and the regulations, FDA consulted the Panel, regarding the classification of the device.

The FDAMA added a new section 510(l) to the act (21 U.S.C. 360(l)). New section 510(l) of the act provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury. Hereafter, these are referred to as ''reserved criteria.'' FDA has considered the general purpose disinfectants in accordance with the reserved criteria and determine that the devices do not require premarket notification. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting a premarket notification to FDA.

In 1980, when other general hospital and personal use devices were classified (45 FR 69678 to 69737, October 21, 1980), FDA inadvertently omitted liquid chemical germicides, such as liquid chemical sterilants and general purpose disinfectants from the classification process. In subsequent years, FDA actively regulated only liquid chemical germicides that were used as accessories to specific class II devices, such as hemodialyzers. FDA began actively regulating all liquid chemical germicides in the early 1990's following efficacy testing by FDA for the Environmental Protection Agency (EPA) and publication of the 1993 General Accounting Office (GAO) report on Hospital Sterilants (Ref. 1). Liquid chemical germicides were regulated as accessories to other devices with the level of regulation applicable coinciding with the classification of the other devices. FDA also determined that two categories of liquid chemical germicides existed, liquid chemical sterilants and general purpose disinfectants.

The first category consists of liquid chemical sterilants which are intended for use as the terminal step in processing critical and semicritical medical devices prior to patient use. Semicritical medical devices contact mucous membranes or nonintact skin during use, while critical devices contact normally sterile tissue or body spaces.

The second category of liquid chemical germicides consists of general purpose disinfectants which are intended to process noncritical medical devices and medical equipment surfaces, and can be used to preclean or decontaminate critical or semicritical medical devices prior to terminal sterilization or high level disinfection. Noncritical medical devices only make topical contact with intact skin of the body.

In addition to being regulated by FDA, certain liquid chemical germicides are regulated by EPA as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). On June 4, 1993, a memorandum of understanding (MOU) was signed between FDA and EPA (Refs. 3 and 4). The purpose of the MOU was to resolve the confusion and burden of dual regulation and, at the same time, ensure that the safety and efficacy requirements of both statutes are met.

In 1996, liquid chemical sterilants used for processing critical and semicritical medical devices were exempted from the definition of a pesticide under FIFRA with passage of the Food Quality Protection Act of 1996 (FQPA) and are no longer regulated by EPA. FDA now has sole regulatory jurisdiction over liquid chemical sterilants and high level disinfectants used to process reusable critical and semicritical medical devices. Regulatory authority over general purpose disinfectants was not affected by FQPA. Therefore, the MOU remains in effect for general purpose disinfectants, and the dual regulatory requirements for these germicides continue until the rulemaking process for classification of the germicides is completed.

II. Recommendations of the Panel

During a public meeting which was held on July 18, 1995, the Panel made the following recommendations regarding the classification of liquid chemical sterilants and general purpose disinfectants.

A. Identification

The Panel recommended that the devices be identified as follows:

A liquid chemical sterilant is a germicide intended for use as the terminal step in processing critical and semicritical medical devices prior to patient use. Semicritical devices make contact with mucous membranes or nonintact skin during use. Critical devices contact normally sterile tissue or body spaces during use (Refs. 5 and 6).

A general purpose disinfectant is a germicide intended to process noncritical medical devices and medical equipment surfaces. A general purpose disinfectant can be used to preclean or decontaminate critical or semicritical medical devices prior to terminal sterilization or high level disinfection. Noncritical medical devices only make topical contact with intact skin of the body (Refs. 5 and 6).

B. Recommended Classification of the Panel

The Panel unanimously recommended that liquid chemical sterilants be classified into class II. The Panel believed that class II with the special controls (the 510(k) guidance document (Ref. 2), voluntary standards, and user information and training) would provide reasonable assurance of the safety and effectiveness of the devices.

The Panel recommended that general purpose disinfectants be classified into class I and that the devices should be exempt from the premarket notification procedures.

C. Summary of Reasons for Recommendation

After reviewing the information provided by FDA, and after

consideration of the open discussions during the Panel meeting and the Panel members' personal knowledge of and clinical experience with the device systems, the Panel gave the following reasons in support of its recommendations to classify the generic type of liquid chemical sterilants for use as the terminal step in processing critical and semicritical medical devices prior to patient use into class II, and general purpose disinfectants for use in processing noncritical medical devices and medical equipment surfaces into class I:

1. The Panel believes that liquid chemical sterilants should be classified into class II because special controls, in addition to general controls, would be necessary to provide reasonable assurance of the safety and effectiveness of the devices, and there is sufficient information to establish special controls to provide such assurance.

2. The Panel believes that general purpose disinfectants should be classified into class I because general controls would provide reasonable assurance of the safety and effectiveness of the devices. In addition to the Panel's recommendation, FDA has considered general purpose disinfectants in accordance with the reserved criteria of new section 510(l) of the act and determined that the general purpose disinfectants do not require premarket notification.

D. Summary of Data Upon Which the Recommendation is Based

The Panel noted that liquid chemical sterilants include peracetic acid, hydrogen peroxide, chlorine dioxide, and glutaraldehyde. These substances are used to sterilize or high level disinfect heat sensitive medical devices such as flexible endoscopes. Toxicity studies have shown hydrogen peroxide and peracetic acid to be nontoxic, nonsensitizing and, at most, minimally irritating. In addition, these chemicals, as well as chlorine dioxide, are used at low concentrations and readily degrade to nontoxic compounds, such as water and molecular oxygen (Refs. 7, 8, and 9).

Toxicity studies have shown glutaraldehyde to be a skin, eye, and respiratory system irritant and a skin sensitizer. Since glutaraldehyde does not readily degrade, long-term effects of its residue as a skin or eye irritant are of concern (Refs. 10 and 11). Although some injuries and deaths have been reported following the use of these chemicals as sterilants and disinfectants, they have been primarily associated with failure of the user to follow the manufacturer's directions for use (Ref. 12).

The Panel noted that general purpose disinfectants include alcohols, chlorines, iodophors, phenolics, and quaternary ammonium compounds. The hazards and adverse effects of these substances are well known (Ref. 8). Toxicity is minimal because these substances are used at low concentrations on equipment surfaces and noncritical devices that only contact intact skin during use.

The use of liquid chemical sterilants and general purpose disinfectants on medical devices is based on the infection control classification system devised by E. H. Spaulding (Refs. 13 and 14), and adopted by infection control practitioners, FDA, and the Centers for Disease Control and Prevention. Spaulding's system is predicated on the relative risks associated with the use of medical devices. According to Spaulding's system, devices that contact normally sterile tissues or body spaces during use are termed critical devices. Critical devices should be sterilized prior to use.

Devices that contact mucous membranes, which can provide a barrier to many, but not all microorganisms, are termed semicritical devices. Semicritical devices should be sterilized prior to use when practical, or should undergo high level disinfection (a high level disinfectant is a sterilant used for a shorter contact time and that kills all microbial pathogens except large numbers of bacterial endospores). General purpose disinfectants can be used to clean or decontaminate critical and semicritical devices prior to a terminal sterilization or high level disinfection process.

E. Risks to Health

The following three risks are associated with the use of germicides such as liquid chemical sterilants and general purpose disinfectants: (1) Nosocomial infection, (2) toxicity associated with chemical exposure, and (3) damage to medical devices.

The formulation of a germicide plays an important role in the effectiveness of the germicide on the device. If the formulation is inadequate for its intended use or if the germicide is improperly used, the sterilization or disinfection process will be ineffective. As a result, the processed device may serve as a potential vector for the transmission of infectious microorganisms to the next patient.

In the **Federal Register** of December 6, 1996 (61 FR 64755), FDA announced the availability of a draft guidance document entitled ''Draft Guidance on the Content and Format of Premarket Notification (510(k)) Submissions for Liquid Chemical Germicides'' (Ref. 2). In the **Federal Register** of May 22, 1997 (62 FR 28055), FDA extended the period to comment on the draft guidance until August 20, 1997.

The guidance document suggests that manufacturers of these devices are to submit, for review and evaluation, microbiological studies supporting all germicidal claims, and adequate instructions for use. EPA registration for general purpose disinfectants requires similar information.

With regard to chemical exposure, health-care workers who process medical devices with either liquid chemical sterilants or general purpose disinfectants are potentially exposed to toxic substances during use of the germicides. In addition, the patient may be exposed to germicide residues if the device is inadequately rinsed.

Labeling recommendations in the guidance document include warnings and precautions regarding the proper use and handling of liquid chemical sterilants and other toxic substances. Additionally, the guidance document recommends a toxicological assessment of germicide residues remaining following rinsing. EPA registration of general purpose disinfectants requires similar information.

Lastly, both liquid chemical sterilants and general purpose disinfectants may damage medical devices causing them to function improperly or create areas that cannot be effectively cleaned, disinfected or sterilized. The guidance document recommends that data demonstrating device materials compatibility with the liquid chemical germicides be included in the 510(k).

F. Special Controls

Based on the available information, FDA believes that, in addition to general controls, the special controls discussed as follows are adequate to address the risks to health which were identified previously.

1. The 510(k) guidance document;
2. Voluntary standards; and
3. User information and training.

The guidance document provides 510(k) applicants with specific directions regarding data and information that should be submitted to FDA in a 510(k) submission for liquid chemical germicides. The document incorporates voluntary standards and guidelines from professional organizations as part of its recommendation for performance testing. Compliance with the recommendations made in the document for liquid chemical sterilants is important in preventing nosocomial infections.

Voluntary standards provide assurance of consistency and uniformity in germicide effectiveness.

User information and training programs are critical to ensure that users have full knowledge and assume responsibility for the safe and effective use of the liquid chemical sterilants.

Adherence to these special controls can provide the user community a greater assurance of effectiveness and appropriate use in order to minimize nosocomial infection through improperly sterilized or disinfected reusable medical devices.

III. Proposed Classification

FDA believes that liquid chemical sterilants should be classified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the devices, and there is sufficient information to establish special controls to provide such assurance.

FDA believes that general purpose disinfectants should be classified into class I because general controls under the act and the EPA registration requirements would provide reasonable assurance of safety and effectiveness of these products. FDA also believes that these devices do not meet the reserved criteria of new section 510(l) of the act and should be exempt from premarket notification requirements.

IV. References

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

1. U.S. General Accounting Office, Report to the Ranking Minority Member Committee on Government Operations, House of Representatives, Hospital Sterilants: Insufficient FDA Regulation May Pose a Public Health Risk, GAO/HRD–93–79, June 1993.

2. FDA, Center for Devices and Radiological Health, Office of Device Evaluation, ''Draft Guidance on the Content and Format of Premarket Notification (510(k)) Submissions for Liquid Chemical Germicides,'' January 1992; revised April 26, 1995.

3. Memorandum of Understanding Between the Food and Drug Administration, Public Health Service, Department of Health and Human Services and the Environmental Protection Agency, Notice Regarding Matters of Mutual Responsibility—Regulation of Liquid Chemical Germicides Intended for Use on Medical Devices, June 4, 1993.

4. Amendment to the June 4, 1993, Memorandum of Understanding Between the Food and Drug Administration, Public Health Service, Department of Health and Human Services and the Environmental Protection Agency, June 30, 1994.

5. General Hospital and Personal Use Devices Panel, Thirtieth Meeting, Transcript, July 18, 1995.

6. General Hospital and Personal Use Devices Panel, Thirtieth Meeting, Summary of Minutes, July 18, 1995.

7. Malchesky, P. S., ''Peracetic Acid and Its Application to Medical Instrument Sterilization,'' *Artificial Organs*, vol. 17, no. 3, pp. 147–152, 1993.

8. Block, S. S., ''Peroxygen Compounds,'' *Disinfection, Sterilization, and Preservation*, pp. 167–181, Philadelphia, 1991.

9. Dychdala, G. R., ''Chlorine and Chlorine Compounds,'' *Disinfection, Sterilization, and Preservation*, pp. 131–151, Philadelphia, 1991.

10. Scott, E. M., and S. P. Gorman, ''Glutaraldehyde,'' in *Disinfection, Sterilization, and Preservation*, pp. 596–614, Philadelphia, 1991.

11. Australian Government Publishing Service, ''Priority Existing Chemical No.3, Glutaraldehyde,'' pp. 53–62, Canberra, July 1994.

12. Spach, D. H., F. E. Silverstein, and W. E. Stamm, ''Transmission of Infection by Gastrointestinal Endoscopy and Bronchoscopy,'' *Annals of Internal Medicine*, vol. 118, no. 2, pp. 117–128, 1993.

13. Spaulding, E. H., ''Role of Chemical Disinfection in the Prevention of Nosocomial Infections,'' Proceedings of International Conference on Nosocomial Infections, pp. 247–254, Chicago, 1970.

14. Spaulding, E. H., ''Chemical Disinfection and Antisepsis in the Hospital,'' *Journal of Hospital Research*, vol. 9, pp. 5–31, 1972.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4)). Executive Order 12866 directs agencies to assess all 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, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule classifying these devices eliminates duplicative registration, and may enable additional small competitors to enter the marketplace by eliminating the cost of complying with two sets of requirements, it will impose no significant economic impact on any small entities. The agency therefore certifies that this proposed rule, if issued, will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Submission of Comments and Proposed Dates

Interested persons may, on or before February 4, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

FDA proposes that any final regulation that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

List of Subjects in 21 CFR Part 880

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 880 be amended to read as follows:

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

1. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Sections 880.6885 and 880.6890 are added to subpart G to read as follows:

§ 880.6885 Liquid chemical sterilants.

(a) *Identification*. A liquid chemical sterilant is a germicide that is intended for use as the terminal step in processing critical and semicritical medical devices prior to patient use. Critical devices make contact with normally sterile tissue or body spaces during use. Semicritical devices make contact with mucous membranes or nonintact skin during use.

(b) *Classification*. Class II (special controls). (Guidance on the Content and Format of Premarket Notification (510(k)) Submissions for Liquid Chemical Germicides, voluntary standards, and user information and training.)

§ 880.6890 General purpose disinfectants.

(a) *Identification*. A general purpose disinfectant is a germicide intended to process noncritical medical devices and equipment surfaces. A general purpose disinfectant can be used to preclean or decontaminate critical or semicritical medical devices prior to terminal sterilization or high level disinfection. Noncritical medical devices make only topical contact with intact skin of the body.

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 880.9.

Dated: October 2, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–29566 Filed 11–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 19, 24, 194, 250 and 251

[Notice No. 869; Ref: Notice No. 859]

RIN 1512–AB71

Implementation of Public Law 105–34, Sections 908, 910 and 1415, Related to Hard Cider, Semi-generic Wine Designations, and Wholesale Liquor Dealers' Signs (97–2523)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: This notice reopens the comment period for Notice No. 859, a notice of proposed rulemaking, published in the **Federal Register** on August 21, 1998. ATF has received requests to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues raised in the notice.

DATES: Written comments must be received on or before December 7, 1998.

ADDRESSES: Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *ATTN: Notice No. 859.* See the Public Participation section of this notice for alternative means of commenting.

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230), mdruhf@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 1998, ATF published a temporary rule and an associated notice of proposed rulemaking in the **Federal Register** soliciting comments from the public and industry on three sections of the Taxpayer Relief Act of 1997, (Treasury Decision ATF–398, 63 FR 44779, and Notice No. 859, 63 FR 44819).

The comment period for Notice No. 859 closed on October 20, 1998. Prior to the close of the comment period ATF received requests from Ms. Cheryl A. Lau, a cider industry representative, Mr. Kirk Seggie, Winery Manager of Andrés Wines (B.C.) Ltd., Mr. Kenton E. Kidd, of the California Apple Commission, and Mr. Thomas E. Dalldorf, Sr., Publisher of *Celebrator Beer News*, to extend the comment period for a short time. All these writers stated that potential commenters in the apple industry were in the middle of the apple harvest and would not be able to take time to provide the sort of historical and technical information requested in the notice. They suggested an extension until late November to afford these interested persons an opportunity to comment. In consideration of the above, ATF finds that a reopening of the comment period is warranted.

Public Participation

ATF requests comments on the temporary regulations published in Treasury decision ATF–398 (63 FR 44779) from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practicable to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

Comments may be submitted by facsimile transmission (FAX) to (202) 927–8602, provided the comments: (1) Are legible, (2) are 8½″×11″ in size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Facsimile transmitted comments will be treated as originals.

Comments may also be sent by electronic mail (e-mail) to nprm@atfhq.atf.treas.gov, provided (1) the message is entitled ''Comment on Notice No. 859; (2) the name and company affiliation, if any, of the commenter is contained in the body of the message; and (3) the message contains no attachments, special characters or encryption. E-mail comments will be printed and filed with comments submitted on paper and by facsimile transmission.

Receipt of comments will not be acknowledged. ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light

of all circumstances, to determine if a public hearing is necessary.

Disclosure

Copies of this notice, Notice No. 859, and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

Drafting Information

The author of this document is Marjorie D. Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Chemicals, Claims, Customs duties and inspections, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting requirements, Wine.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Claims, Customs duties and inspections, Drugs, Electronic funds transfers, Excise taxes, Foods, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Transportation, Wine.

27 CFR Part 251

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspections, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Perfume, Reporting and recordkeeping requirements, Transportation, Wine.

Authority and Issuance

This notice is issued under the authority in 26 U.S.C. 5301, 7805, and 27 U.S.C. 205.

Signed: October 29, 1998.

John W. Magaw,

Director.

[FR Doc. 98–29746 Filed 11–5–98; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF EDUCATION

34 CFR Ch. VI

Office of Postsecondary Education, Student Assistance

AGENCY: Department of Education.

ACTION: Request for advice and recommendations on regulatory issues under Title IV of the Higher Education Amendments of 1998, ''Student Assistance.''

SUMMARY: The Secretary of Education (Secretary) solicits advice and recommendations from the public prior to publishing proposed regulations to implement student assistance programs under Title IV of the Higher Education Act of 1965, as recently amended by the Higher Education Amendments of 1998.

DATES: We request that you send written comments by December 15, 1998. You may also submit comments at regional hearings to be held on December 4–12, 1998. (See dates, times and locations of regional hearings under the **SUPPLEMENTARY INFORMATION** section of this notice.)

ADDRESSES: Please send your comments to Brian Kerrigan, U.S. Department of Education, 400 Maryland Avenue, SW, ROB-3, Washington D.C. 20202–5257, or fax them to Brian Kerrigan at (202) 205–0786. You may also E-mail your comments to:

hea98negotiated__rulemaking@ed.gov

FOR FURTHER INFORMATION CONTACT: Brian Kerrigan, U.S. Department of Education, 400 Maryland Avenue, SW, Rob-3, Washington, DC 20202–5257. Telephone: (202) 708–5217. If you use a telecommunications device for the deaf (TDD) you 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:

Background

On October 7, President Clinton signed into law Public

Law 105–244, the Higher Education Amendments of 1998 (Amendments), amending the Higher Education Act of 1965 (HEA). Section 492 of the HEA, as amended, requires that, before publishing any proposed regulations to implement programs under Title IV, the Secretary obtain public involvement in the development of the proposed regulations. The Secretary must obtain advice and recommendations from individuals and groups involved in student financial assistance, such as students, legal assistance organizations that represent students, institutions of higher education, guaranty agencies, lenders, secondary markets, loan servicers, guaranty agency servicers, and collection agencies, and must provide for a comprehensive discussion and exchange of information concerning the implementation of Title IV of the HEA. After obtaining advice and recommendations, the Secretary will conduct a negotiated rulemaking process to develop proposed regulations. All published proposed regulations must conform to any agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process, or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

Participants in the negotiation process will be selected by the Secretary from individuals nominated by the groups mentioned above, and will include both representatives of those groups from Washington, D.C., and industry participants. To the extent possible, the Secretary will select individuals reflecting the diversity in the industry, representing both large and small participants, and serving both local areas and national markets. The Secretary intends to include in the negotiation sessions those groups that participated in the 1992 and 1994 higher education negotiation sessions. Any additional groups that did not

participate in the 1992 and 1994 negotiation sessions that would like to participate in these negotiation sessions should inform the Department of their interest in participating, either by submitting a written comment, or by attending one of the regional hearings.

The negotiation process must be conducted in a timely manner so that the Secretary can issue the final regulations within 360 days of the date of enactment of the Amendments. Additionally, the Secretary must publish any final regulations under Title IV by November 1, 1999, as any final regulations not published by that date would not take effect until July 1, 2001, at the earliest. As a result of these time constraints, the Secretary anticipates a highly expedited process in the development of any proposed regulations.

The Secretary therefore invites advice and recommendations from interested parties concerning what regulations may be necessary to implement Title IV of the HEA. The Secretary also invites advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. The Secretary further requests advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet the statutory deadlines mentioned above. Additionally, the Secretary would like advice and recommendations concerning how the negotiated rulemaking process should be conducted, given the time available and the number of regulations that may need to be developed.

Under its principles for regulating, the Department of Education (Department) will regulate only when it improves the quality and equality of services to its customers—learners of all ages. The Department will regulate only when absolutely necessary, and then in the most flexible, most equitable, and least burdensome way possible. The Department will regulate if a demonstrated problem exists and cannot be resolved without regulation or if necessary to provide legally binding interpretation to resolve an ambiguity. The Department will not regulate if entities or situations to be regulated are so diverse that a uniform approach does more harm than good.

Regional Hearings

Participants are welcome to address issues relating to the implementation of Title IV of the HEA, either by attending the regional hearings or submitting written comments. Comments will be used to help develop any proposed regulations, and will not result in any statutory changes. Individuals desiring to present comments at the hearings are encouraged to do so. It is likely that each participant choosing to make a statement will be limited to five minutes. Individuals interested in making oral statements will be able to sign up to make a statement beginning at 8:30 a.m. on the day of the hearing at the Department's regional hearing on-site registration table on a first-come, first-served basis. If additional time slots remain, individuals may be given additional time to speak. If no time slots remain, the Department has reserved one additional hour at the end of the first day, and one-half hour at the end of the second day for people who were not able to register to speak. The amount of time available will depend upon the number of individuals who request reservations. Speakers may also submit written comments. The dates, times, and locations of the regional hearings are listed below.

In addition, for anyone unable to attend any of the regional hearings, the Department will also accept, and strongly encourages, written comments. You should send your comments to Brian Kerrigan at the above address by December 15, 1998. If possible, please try to provide a copy of any written comments on a disk.

The Department has reserved a limited number of rooms at each of the following hotels at a special government per diem room rate. To reserve these rates, be certain to inform the hotel that you are attending the regional hearings with the Department of Education.

The hearing sites are accessible to individuals with disabilities. The Department will provide a sign language interpreter at each of the scheduled hearings. An individual with a disability who will need an auxiliary aid or service other than an interpreter to participate in the meeting (e.g., assistive listening device, or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Dates, Times, and Locations of Regional Hearings

1. December 4, 1998, 9:00–5:00 p.m., December 5, 1998, 9:00 a.m.–12:00 p.m., Holiday Inn on the Hill, 415 New Jersey Ave., N.W., Washington, D.C.; 1–202–638–1616, and ask for reservations. Sleeping Room rate: $126.00 (inclusive of all taxes). Reservations must be made by November 13.

2. December 8, 1998, 9:00–5:00 p.m., December 9, 1998, 9:00 a.m.–12:00 p.m., The Regal Knickerbocker, Walton Place at North Michigan Avenue, Chicago, Illinois; 1–312–751–8100, and ask for reservations. Sleeping room rate: $120.00 (inclusive of all taxes). Reservations must be made by November 16.

3. December 11, 1998, 9:00 a.m.–5:00 p.m., December 12, 1998, 9:00 a.m.–12:00 p.m., Hyatt Regency Los Angeles, 711 South Hope Street, Los Angeles, California; 1–213–683-1234, and ask for reservations. Sleeping room rate: $124.26 (inclusive of all taxes). Reservations must be made by November 27.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in Text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg/htm
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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Program Authority: 20 U.S.C. 1090a.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: November 4, 1998.

Richard W. Riley,

Secretary of Education.

[FR Doc. 98–30004 Filed 11–5–98; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA4081b; FRL–6184–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NO_X RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the

purpose of establishing volatile organic compound (VOC) and nitrogen oxides (NO_X) reasonably available control technology (RACT) for 16 major sources located in Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal on as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the accompanying technical support document. If no adverse comments are received in response to this action, 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. Any parties interested in commenting on this action should do so at this time. If adverse comments are received that do not pertain to all paragraphs subject to this rulemaking action, those paragraphs not affected by the adverse comments will be finalized in the manner described here. Only those paragraphs that receive adverse comments will be withdrawn in the manner described here.

DATES: Written comments must be received by December 7, 1998.

ADDRESSES: Written comments on this action should be addressed to David Campbell, Air Protection Division, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. 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; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: David Campbell, (215) 814–2196, at the EPA Region III office or via e-mail at campbell.dave@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: For additional information pertaining VOC and NO_X RACT determinations for individual sources located in Pennsylvania, see the Direct Final rule located in the Rules and Regulations Section of this **Federal Register**.

Dated: October 27, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 98–29657 Filed 11–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 102–0111; FRL–6185–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP). This revision concerns Rules 1, 2 and 4 of Regulation 2—Permits, for the Bay Area Air Quality Management District (BAAQMD or the ''District''). This State Implementation Plan (SIP) revision was submitted by the State of California for the purpose of meeting the requirements of the Clean Air Act (CAA), as amended in 1990, with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). This SIP revision was submitted by the State to satisfy Federal requirements for an approvable nonattainment area NSR SIP for the District.

The intended effect of proposing a limited approval and limited disapproval of these rules is to strengthen the federally approved SIP by incorporating these updated provisions. EPA's final action on this proposal will incorporate the rules into the SIP. EPA is proposing a simultaneous limited approval and limited disapproval under provisions of the Act regarding EPA action on SIP submittals and general rulemaking authority. While strengthening the SIP, this revision contains deficiencies which the BAAQMD must address before EPA can grant full approval under Section 110(k)(3).

DATES: Comments must be received on or before December 7, 1998.

ADDRESSES: Comments may be mailed to: John Walser, Permits Office [AIR–3], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the state submittal and rules are available for public inspection at EPA's Region IX office during normal business hours and at the following locations: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109. California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: John Walser, Permits Office, [AIR–3], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1257.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules proposed for limited approval and limited disapproval into the California SIP are the District's Regulation 2 Permits, Rule 1 General Requirements, Rule 2 New Source Review, and Rule 4 Emissions Banking. These rules were submitted by the California Air Resources Board on behalf of the District to EPA on September 28, 1994.

II. Background

The air quality planning requirements for nonattainment NSR are set out in part D of title 1 of the Clean Air Act. EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements [see 57 FR 13498 (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. EPA has also proposed regulations to implement the changes under the 1990 Amendments in the NSR provisions in parts C and D of title 1 of the Act. [See 61 FR 38249 (July 23, 1996)]. Upon final promulgation of those regulations, EPA will review those NSR SIP submittals on which it has already taken final action to determine whether additional SIP revisions are necessary.

Part D of the Clean Air Act (CAA), Sections 171 to 173, Section 182, Section 187, and Section 189, requires that States incorporate in their State Implementation Plans an acceptable permitting program for the construction and operation of new or modified major stationary sources in nonattainment areas. The statutory permit requirements for ozone nonattainment areas are generally contained in Section 173, and in subpart 2 of part D. These are the minimum requirements that States must include in an approvable

implementation plan. EPA's requirements are contained in 40 CFR 51.165, revised as of July 1, 1992, and the Emissions Trading Policy Statement, published December 4, 1986 under 51 FR 43814. EPA relied upon the following materials in its review of the District's NSR rules: CAA, as amended, 40 CFR 51.160 through 51.165, Emissions Trading Policy Statement, General Preamble to Title 1, and the December 15, 1992, draft comprehensive SIP checklist for all Part D NSR requirements.

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the San Francisco Bay Area (43 FR 8964). On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the Bay Area Air Quality Management District's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

On November 12, 1993, BAAQMD submitted a request for redesignation to attainment of the ozone standard. Subsequently, EPA approved BAAQMD's request and the San Francisco Bay Area was reclassified as an attainment area. 40 CFR 81.305. Subsequently, on July 10, 1998, EPA revoked the Bay Area's attainment status and reclassified the area back to nonattainment for ozone. 63 FR 37258. The Bay Area was redesignated under Subpart 1 of Part D of the Act, and for this reason does not have a classification. However, for purposes of the new source review and Title V programs, moderate area requirements apply to the Bay Area based on its design value of .138 ppm. *See* 62 FR 66581, December 19, 1997. Because the District is currently designated as nonattainment for ozone and attainment or unclassifiable for NO_2, PM–10, Pb, CO, and SO_2, the District's nonattainment rules must be applied to all major new or modified stationary sources proposing to emit ozone precursors, namely VOC and NO_X.

This document addresses EPA's proposed action for BAAQMD Regulation 2 Permits, Rules 1, 2 and 4. The BAAQMD adopted these rules on June 15, 1994. These submitted rules were found to be complete on November 22, 1994, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V;[1] and are being proposed for limited approval and limited disapproval.

BAAQMD Regulation 2 clarifies the terms and requirements that apply to the District's NSR regulation and emissions banking program. BAAQMD Regulation 2 was originally adopted as part of BAAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. The following is EPA's evaluation and proposed action for BAAQMD Regulation 2, Rules 1, 2 and 4.

III. EPA Evaluation and Proposed Action

In determining the approvability of a rule submittal, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

The statutory requirements for nonattainment NSR SIPs and permitting are found in sections 172 and 173 of the Act. The Act requires States to address a number of nonattainment NSR provisions in a SIP submittal to meet the requirements of part D of title 1 of the Act.

EPA has evaluated District Rules 1, 2 and 4 of Regulation 2 and has determined that the rules contain deficiencies and are not fully consistent with CAA requirements, EPA regulations and EPA policy. A more detailed analysis is contained in the Technical Support Document for this submittal which is available for inspection at the Region IX address listed above.

The following six items are issues that EPA has identified as significant deficiencies (approvability issues) in BAAQMD Regulation 2.

1. Interpollutant Trading

Regulation 2, Rule 2 Sections 302.1, 302.2 and 303.1

Section 302.1 states that emission reduction credits (ERCs) of nitrogen oxides (NO_X) may be used to offset increased emissions of precursor organic compounds (POC) at the offset ratio specified in Section 2–2–302 (generally 1.15 to 1.0). Section 302.2 allows for emission reduction credits of POC to be used to offset increased emissions of NO_X at the offset ratio specified in Section 302.2, and Section 303.1 allows ERCs of NO_X and/or sulfur dioxide (SO_2) to be used to offset increased emissions of particulate matter (PM10) at ratios deemed appropriate by the Air Pollution Control Officer.

These sections of Regulation 2, Rule 2 are not approvable in their current form because they do not contain adequate safeguards to ensure an overall air quality benefit from this type of trading. For example, as currently drafted, the rule allows for the same trading ratio for POC to POC trades as it does for POC for NO_X trades, without any demonstration that such trades will result in an equal air quality benefit. EPA continues to discourage interpollutant trading due to the scientific uncertainty of acceptable pollutant trading ratios. However, if the District wishes to allow interpollutant trading, the rule must be consistent with EPA guidance.[2] For instance, the rule must restrict interpollutant trading to precursor pollutants contributing to the same secondary non-attainment pollutant (such as trading POC for NO_X). The District must either perform adequate modelling studies to include a scientifically determined pollutant trading ratio and define that ratio in the rule, or perform a case-by-case analysis of the ratio, and state in the rule that the ratio will be determined after adequate modelling, public notice, and EPA concurrence.

Additionally, the District's interpollutant trading provisions may allow inter-District trading without regard to the attainment status of the District where the ERCs are created and used, because the rule is silent on this issue. Therefore, the rule must be revised to prohibit this type of trading, or be revised to explicitly include the provisions of 173(c)(1) of the Clean Air Act.

2. Exemption List

Regulation 2 Permits, Rule 1 General Requirements

Sections 2–1–114 to 128, provide that ''any equipment that produces air contaminants in excess of 150 lb/day of any single pollutant is not exempt'' from permit review. EPA is concerned that the District interprets this language to apply on an individual emissions unit basis, rather than a facility-wide basis.

EPA's fundamental requirements with respect to permit exemptions are threefold. First, the exemptions must not keep a major source from appearing to be major. That is, emissions from

[1] EPA adopted completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[2] *See* letter from Dave Howekamp to Dan Speer of the San Diego Air Pollution Control District dated April 13, 1995.

exempt equipment must be included in the determination of whether a source is major (or whether a modification is major), whether for NSR or Title V purposes. Second, emissions from exempt equipment must be included in determining the offset liability for a source. Third, substantive requirements, such as BACT, must generally apply to all emissions units.

EPA continues to believe that if the 150 lb/day cap on exemptions applies to any group of emissions units or pieces of equipment, and not just to a single piece of equipment, the District is likely to be able to satisfy the above requirements. For example, the District may be able to argue that 150 pounds a day is de minimus from a BACT standpoint. Also, a maximum 150 pound per day facility wide exemption could be factored into offset requirements.

In addition, Regulation 2, Rule 1 exempts equipment such as internal combustion engines or gas turbines of less than 250 horsepower rating (Section 2–1–115.2) from authority to construct and permit to operate requirements, and exempts certain other sources subject to generally applicable requirements. These sources may have high emissions and a greater likelihood of violating emission standards and for these reasons should not be included on an exemptions list.

3. Functionally Identical Replacement

Regulation 2, Rule 2–NSR, Dated 6/15/94, Sections 2–2–225.4, 2–2–313, 2–2–241 and 2–2–608: Replacement Sources

EPA does believe that the sections in Regulation 2, Rule 2 concerning functionally identical replacement may not fully meet the federal requirements found at 40 CFR 51.165. Specifically, section 51.165(a)(1)(v)(A) defines ''major modification'' as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act. Section 51.165 (a)(1)(v)(C)(1) excludes ''routine maintenance, repair and replacement'' from the definition of physical or operational change. Such assessments should be made on a case-by-case basis, but would generally not include replacement of emissions units (''sources'' in BAAQMD's nomenclature), or life extension projects.

Additionally, Section 2–2–313 of Regulation 2 states that offset requirements for replacement sources of POC and NO_X shall be met either in accordance with Section 2–2–302 Offset Requirements, or 2–2–608 Alternate Emission Calculation Procedures, Replacement Sources, which is an alternative to the calculation procedures outlined in Section 2–2–605. EPA believes that the alternate emission calculation procedures outlined in Section 2–2–608 may allow replacement sources to construct without fully applying offsets that would be required by Section 2–2–605, and by the federal regulations at 40 CFR 51.165. As drafted, the rule does not require the replacement source to consider the operating history of the replaced source, which could have been operating at a capacity well below its maximum allowable limits (e.g., actual emissions 50 percent of potential emissions). Therefore, the calculation appears to use a potential to potential emissions test, and as a result no offsets would be needed. EPA's regulations and policy (Emission Trading Policy Statement, FR 51 43838 and 40 CFR 51.165) require an actual to potential test for determining emission changes, and, consequently, offset requirements.

4. Ensuring Offsets Are Surplus When Used

Both Regulation 2, Rule 2 and Regulation 2, Rule 4 are silent regarding the requirement to ensure that ERCs are surplus at the time of use. All ERCs must be adjusted at the time of use pursuant to the requirements of Sections 173 (a), 173 (c)(1) and 173 (c)(2) of the Clean Air Act (''Act''). EPA has provided flexibility in the implementation of these requirements in the August 26, 1994 memo from John Seitz to David Howekamp entitled, ''Response to Request for Guidance on Use of Pre-1990 ERCs and Adjusting for RACT at Time of Use.'' For example, if an ERC is created and approved this year, but the District subsequently proposes, passes and includes (implicitly or explicitly) in its plan a control measure related to the source category of the creator of the ERC, the District must, upon use of the ERC, evaluate the effect the control measure would have had on the source that created the reduction, and reduce the amount of the ERC appropriately. Section 173 (a) of the Act requires that offsetting emission reductions be federally enforceable at the time an NSR permit is issued, and in effect by the time the source commences operation (Section 173 (c)(1)). In addition, Section 173 (c)(2) requires that offsets be surplus of all other requirements of the Act. The District must adjust all emission reductions to ensure that the surplus requirement of Section 173(c)(2) is met at the time that the reductions are used to meet the offset requirements of Section 173 (a) and (c).

5. Exemption, Emissions From Abatement Equipment

Section 2–2–112 in Regulation 2, Rule 2

This section states that BACT requirements shall not apply to emissions of secondary pollutants which are the direct result of the use of an abatement device which complies with the BACT or BARCT requirements for control of another pollutant. On July 1, 1994, EPA issued guidance from John Seitz, Director of the Office of Air Quality Planning and Standards, entitled ''Pollution Control Projects and New Source Review (NSR) Applicability'', which states that a source must secure offsetting reductions in the case of a pollution control project which will result in a significant increase in nonattainment pollutants.

Section 2–2–112 in Regulation 2, Rule 2 must be revised to make it clear that significant emissions of secondary pollutants which result from control devices or requirements are subject to the requirement to obtain offsets.

6. Prevention of Significant Deterioration

EPA suggests that the District add lead to the PSD pollutant list in Regulation 2, Rule 2, Sections 2–2–304, 2–2–305 and 2–2–306. The rule lists CO, PM_{10}, SO_2, POC and NO_X as PSD pollutants, but excludes lead. EPA realizes that the District has a 0.6 ton/yr BACT threshold for lead, and in Regulation 2, Rule 1, Section 111.1 a 0.3 lb/day lead exemption threshold for authorities to construct or permits to operate. However, the PSD pollutant list must include all criteria pollutants, including lead.

Because the rule deficiencies described above are inappropriate for inclusion in the SIP, EPA cannot grant full approval of this rule under section 110(k)(3). Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of BAAQMD's submitted

Regulation 2 under sections 110(k)(3) and 301(a) of the CAA.

It should be noted that the rules covered by this proposed rulemaking have been adopted by the BAAQMD, subsequently revised, and are currently in effect in the BAAQMD. EPA's final limited disapproval action will not prevent the BAAQMD or EPA from enforcing this rule.

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

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. 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 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 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 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).

F. 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 annual 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 annual 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: October 29, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 98–29818 Filed 11–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[OK–15–1–7399b: FRL–6183–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is approving the Oklahoma State Plan for control of air emissions from existing municipal waste combustors. The plan provides for implementation and enforcement of the Emissions Guidelines applicable to existing Municipal Waste Combustors with capacity to combust more than 250 tons per day of municipal solid waste. In the final rules section of this **Federal Register**, EPA is approving the State Plan as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment 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 this action, no further activity is contemplated in relation to this 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. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please see the direct final rule located elsewhere in today's **Federal Register** for a detailed description of the Oklahoma State Plan.

DATES: Comments must be received by December 7, 1998. If no adverse comments are received, then the direct final rule is effective on January 5, 1999.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665–7214.

Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, OK 73101–1677, telephone (405) 702–4100.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Region 6, Air Planning Section, at the above address, telephone (214) 665–7219.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Municipal waste combustors, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 28, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 98–29655 Filed 11–5–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–190, RM–9317]

Radio Broadcasting Services; Cross City, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Tony Downes proposing the allotment of Channel 249A at Cross City, Florida. Channel 249A can be allotted to Cross City with a site restriction 2 kilometers (1.3 miles) west of the community at coordinates 29–38–35 and 83–08–28.

DATES: Comments must be filed on or before December 14, 1998, and reply comments on or before December 29, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Tony Downes, 3029 Harbor Hills Road, Dunnellon, Florida 34431.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–190, adopted October 14, 1998, and released October 23, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–29770 Filed 11–5–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 243

[FRA Docket No. HST–1; Notice No. 2]

RIN 2130–AB14

FOX High Speed Rail Safety Standards

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Public Regulatory Conference.

SUMMARY: By notice of proposed rulemaking (NPRM) published on December 12, 1997 (62 FR 65478), FRA proposed safety standards for the Florida Overland eXpress (FOX), a high speed rail system planned for development in Florida. This document announces a public regulatory conference to address specific issues, set forth below, that are related the NPRM and comments FRA has received in response to the NPRM.

DATES: FRA will host a public regulatory conference on November 23, 1998 at 10:00 a.m. Any interested party who desires to attend or participate in the conference must notify FRA's Docket Clerk in writing on or before November 17, 1998.

ADDRESSES: *Regulatory Conference:* The regulatory conference will take place in Conference Area 1, Seventh Floor, 1120 Vermont Avenue, NW, Washington, D.C.

Docket Clerk: Written notification to FRA's Docket Clerk must identify the docket number, the participant's or attendee's name, address, and phone number. Each notification must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, RCC–10, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Christine Beyer, Trial Attorney, Office of the Chief Counsel, RCC–11, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20950 (telephone 202–493–6027).

SUPPLEMENTARY INFORMATION: FRA published its NPRM for the proposed FOX high speed rail system on December 12, 1997. At that time, FRA provided all interested parties the opportunity to request a public hearing to discuss the NPRM. However, FRA did not receive any requests for a public hearing, and so none was held. FRA received written comments from the Florida Department of Transportation (FDOT) and FOX (filed jointly and referred to hereafter FDOT/FOX), the Brotherhood of Maintenance of Way Employes, Simula Technologies, Inc., the Association of American Railroads, GE Plastics, Atohaas Americas, Inc., and the American Public Transit Association.

FRA is in the process of analyzing all comments received to determine how the agency should proceed with final standards in this matter. As part of that analysis, FRA has determined that additional information is necessary in order for the agency to respond fully and accurately to all commenters. In particular, FRA believes it is necessary to explore the basis on which FDOT/FOX claim that the standards proposed in the NPRM are unduly costly. FRA's mission is to provide a very high level of safety without imposing needless financial burden, and so this claim is one the agency intends to investigate thoroughly. FRA requested detailed information from FOX in this regard, by letter dated October 23, 1998, and FOX responded to the requests in two letters, dated November 2 and 3, 1998. (Copies of these letters are in the docket of this matter.) FRA plans to discuss these areas further at the regulatory conference.

The conference will be conducted on the record, with a stenographer present, in question and answer format. While the format will be conversational to some degree, it is important to note that the conference will not be an opportunity for participants to question FRA staff on the reasoning behind all standards proposed in the NPRM, or to issue broad opinions about the NPRM. FRA provided rationale for the proposed standards in the preamble and section-by-section analysis of the NPRM, and that document speaks for itself. In addition, a public hearing is the appropriate forum for presenting broad opinions about the proposed rule, and interested parties chose not to avail themselves of the opportunity for a public hearing. It is also important to note that FRA has reviewed all comments received, and so there is no need for participants to restate what they have already submitted in written comments. FRA is hosting the regulatory conference in order to focus narrowly on particular aspects of the NPRM and comments received. The FOX representatives should be prepared to discuss the following topics:

- All assumptions made in the calculation of each cost estimate listed in the chart on page 9 of Section 3.0 of the FDOT/FOX comments, and the error factor built into these assumptions and costs; and
- All assumptions made in the project revenue model and the error factor incorporated in the model.

In addition, FRA may have additional questions about specific aspects of the FDOT/FOX comments.

Public Participation Procedures

Any person wishing to participate or attend the public regulatory conference should notify the Docket Clerk by mail at the address provided in the **ADDRESSES** section on or before November 17, 1998. The notification should identify the participant's and attendee's name, and the party the participant represents (if any). The notification must provide the Docket Clerk with the participant's and attendee's mailing address and phone number. FRA reserves the right to limit the participation of individuals who fail to provide such notification.

Issued in Washington, D.C., on November 3, 1998.

S. Mark Lindsey,

Chief Counsel.

[FR Doc. 98–29897 Filed 11–4–98; 10:35 am]

BILLING CODE 4910–06–P

Notices

Federal Register
Vol. 63, No. 215
Friday, November 6, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Risk Management Agency

RIN 0563–AB61

Dairy Options Pilot Program

AGENCY: Risk Management Agency, USDA.

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of a new Dairy Options Pilot Program (DOPP) to be administered by the Risk Management Agency (RMA) in conjunction with the private sector. The objective of DOPP is to provide education, training and assistance to producers to ascertain whether put options can provide producers with reasonable protection from the price risk.

EFFECTIVE DATE: December 14, 1998.

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the cost-benefit analysis to the DOPP, contact Joe Connor, Financial Analyst, Reinsurance Services Division, Risk Management Agency, United States Department of Agriculture, 1400 Independence Avenue, S.W., Stop 0804, Room 6739–S, Washingon, DC., 20250–0804.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by OMB.

Cost-Benefit Analysis

The program is designed to increase the level of understanding of options contracts as risk management tools among dairy producers and to explore their specific applicability to the dairy industry. The costs to the Government of options premium under the program are estimated to be about $10 million annually. If successful, the program will help create liquid markets in basic formula price (BFP) futures and options contracts which would be sustained, in part, by the on-going hedging of output price risk by dairy producers who have benefited from the educational aspect of the program. Under that scenario, the benefits of the program would include furnishing producers with a viable price risk management alternative, exerting a stabilizing influence on the dairy industry, and contributing to the Department's goals of supporting market oriented reforms in the agricultural sector.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this notice have been approved by the Office of Management and Budget (OMB) under control number 0563–0054 through February 28, 2001.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This notice contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this notice is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this notice does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this notice will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This notice will not have a significant impact on a substantial number of small entities. The provisions included in this notice will not impact small entities to a greater extent than large entities. The amount of work required of brokers will only increase slightly because the information to determine the eligibility of producers and trading activities is already collected by brokers specializing in hedge positions and the only additional burden is the electronic transmittal of this information. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No.10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This notice has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this notice will not have a retroactive effect. The provisions of this notice will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by RMA may be brought.

Environmental Evaluation

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

Section 191 of the Federal Agriculture Improvement and Reform Act of 1996 authorizes the Secretary of Agriculture (Secretary) to conduct a pilot program for one or more agricultural commodities to determine the feasibility of the use of futures and options as risk management tools to protect producers from fluctuations in price, yield and income. Accordingly, the Secretary directed RMA to develop DOPP.

The purpose of this notice is to announce the implementation of DOPP. DOPP will not be published as a proposed or final rule unless the program is authorized to be and is offered on a wider basis. DOPP will be in effect when applications and contracts are made available by RMA and producers in selected counties are provided actual notice through the mail of the program's availability.

DOPP is intended to offer an educational experience to dairy producers whose need for risk management tools has risen sharply as a result of unprecedented price volatility, the elimination of price supports, and the current unavailability of production insurance. DOPP will be offered on a pilot basis to determine the usefulness of commodity futures and options markets to manage risk in the dairy industry.

The program represents a joint initiative between RMA and the private sector. DOPP procedures were first proposed to RMA by the Coffee, Sugar & Cocoa Exchange (CSCE). During the development of this program, the Chicago Mercantile Exchange (CME) provided additional recommendations. If successful, the educational benefits of DOPP will prepare producers to manage their price risk independently through the milk futures and options markets.

The program will be available in the following States and counties: Stanislaus, Merced, Tulare, San Bernadino, San Joaquin, and Kings counties, California; Stearns, Otter Tail, Todd, Morrison, Winona, and Goodhue counties, Minnesota; St. Lawrence, Oneida, Steuben, Chautaugua, Jefferson, and Lewis counties, New York; Lancaster, Bradford, Franklin, Crawford, Berks, and Chester counties, Pennsylvania; Hopkins, Wood, Van Zandt, Erath, Johnson, and Comanche counties, Texas; Marathon, Clark, Grant, Vernon, and Chippewa counties, Wisconsin; and Franklin, Addison, Orleans, Orange, Rutland, and Caledonia counties, Vermont. At the discretion of the Secretary, States and counties are subject to change throughout the duration of this pilot program.

The participation limit per county is set at 100 producers, subject to adjustments as described below. Counties with a higher number of participants signing-up will have participants selected through a lottery. Applicants who miss the opportunity to participate in the first round of the program will obtain preference in the next round offered in their county. When a county has fewer than the maximum number of participants, the excess program vacancies will be pooled and distributed among counties where more than the maximum number has signed up. Producers wishing to participate in the program must fill out and sign an application (Form CCC–320) and a release of information from their broker to RMA (CCC–321).

The program will last a maximum of 8 months for each participating producer commencing at the date of training through the close-out of DOPP options positions. After registration and training, producers will have up to 2 months to purchase DOPP options and all DOPP options must expire within 6 months from the date of purchase. Producers are required to buy ''put options'' at least two months in the future in order to allow time for the educational benefits of the program to be realized. For the same reason, producers will be required to hold their options until the four week period immediately prior to the expiration date.

In order to introduce the new trading volume onto the markets slowly, each round of participants will commence trading at different times by state.

The two exchanges where the BFP futures and put options are currently available are CSCE and CME. The contracts on the two exchanges differ with regard to quantity. Under the program, a participating producer will be permitted to purchase contracts to hedge between 100,000 and 600,000 pounds of milk over a six-month period. Producers will be required to submit documentation supporting their farm's production of at least 100,000 pounds of milk over a six-month period.

Discussion of Comments and Changes to the Program

On Friday, January 2, 1998, RMA published an Advance Notice of Availability and Request for Comments in the **Federal Register** at 63 FR 51 to seek input from the public on a new DOPP to be administered by the RMA in conjunction with the private sector. The public was afforded 30 days to submit written comments and opinions.

Approximately one-hundred comments were received from dairy producers, cooperatives, industry associations, milk processors, members of Congress, commodities exchanges, academics, state representatives, and the general public. Over 95 percent of the comments were in favor of the concept of the program, though many suggested ways to improve the program's design features.

Comments received generally revolve around 4 major issues: (1) what states and counties would be first implemented; (2) what exchange or exchanges would be used to trade DOPP options; (3) whether cooperatives should be able to participate as eligible producers; and (4) various modifications to the constraints on trading behavior placed on DOPP participants. The comments received and RMA's responses are as follows:.

Comments: Seventy comments were solicitations by producers, agricultural extension agents, brokers, futures exchanges, association of dairy cooperatives, state and Federal government representatives, and legislators to implement DOPP in their states and counties or congressional districts. One cooperative suggested that the county selection criteria should be: (1) the majority of farms (but not all) should be family operations; (2) states should be representative of the industry as a whole; (3) states should not be selected if they are dominated by just one or two cooperatives; and (4) favor should be given to states with strong pre-existing support structures such as active university extension, marketing clubs, etc. An extension agent suggested selecting states and counties from the several regions of milk production, and makes a point of selecting one state from the west and from the southeast.

Response: Selection of the counties where the DOPP is to be implemented first was based on the concentration of production and the geographical proximity of selected counties to one another. The former criterion is relatively objective and was based on 1992 agricultural census data. The latter criterion is more subjective but is necessary to enable RMA to increase operational efficiency with regard to training and compliance. The selected counties contain a diverse mixture of family farms and corporate farms of all sizes, as well as regions where many cooperatives are active, not just one or two dominant cooperatives. Extension support and marketing clubs are also found in many of these areas.

Comments: Fifty-one comments from cooperatives, futures exchanges, legislators, association of dairy cooperatives, brokers and industry associations suggested the use of a single exchange or a single contract in the program. They can be summarized as follows:

(A) DOPP options should be traded solely on the Coffee Sugar & Cocoa Exchange (CSC) because: (1) Trading on two exchanges diffuses liquidity the program could be expected to build; (2) it makes the program less confusing to the new trader; (3) it makes data collection and analysis easier; (4) it recognizes CSC's longer commitment to

the project and innovative contribution to the program's design; and (5) CSC has an excellent track record on aggressive efforts to present educational seminars.

(B) DOPP options should be traded using any single contract and exchange but not more than one of either to make the program less complicated.

(C) DOPP options should be traded on any eligible exchange as established by the language of the statute and the Advance Notice of Availability and let the market decide where DOPP options should be traded and inform the producers of the different contracts available on the market.

Response: Dairy producers should be able to choose the options product that best fits their needs both in terms of contract size and in the exchange used. The market alone should dictate where options are traded and it would be inappropriate for RMA to intervene in that process. Further, the complexity of these markets is not something the producer should be sheltered from under the program. Rather, the program is intended to be an educational opportunity for the producer to become familiar with this complexity.

Comments: Two cooperatives and one association suggested DOPP should allow cooperatives to be DOPP participants, thus making the program less time consuming to the producer and bringing their key partner, the cooperative, up to speed on futures and options as well as indirectly encouraging cooperatives to expand their forward contracting programs.

Response: Based on the language in section 191 of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act), there is no authority to allow other than those producers who are eligible for a production flexibility contract, a marketing assistance loan, or other assistance under title I of the 1996 Act. Cooperatives are not eligible for any of the programs listed. Therefore, no change has been made.

Comment: One exchange suggested that RMA should clarify restrictions on the timing of purchases.

Response: RMA has clarified the provisions regarding the date by which all purchases must be complete. RMA has also added a provision to clarify for what months the options can be purchased.

Comment: One broker and one crop insurance company suggested that RMA should remove the 600,000 pound maximum production that can be hedged under the program.

Response: This program is experimental and intended to determine the feasibility of such a risk management tool. The 600,000 pound maximum is intended to allow sufficient use of the market while protecting taxpayers from larger outlays than necessary to achieve the educational objective of the program. Therefore, no change has been made.

Comment: One association and one broker commented that RMA should change the maximum strike price of 25 cents out-of-the-money to the first strike price that is ''at'' or ''in'' the money.

Response: This change would also be too expensive to implement and, potentially, less relevant educationally because producers wishing to hedge production might be less inclined to choose an expensive ''in'' the money option. However, the 25 cent requirement has been reduced to 10 cents.

Comment: One legislator and one producer suggested that DOPP should be implemented in the statutorily allowed 100 counties.

Response: As RMA's first options pilot program, it has been determined that a smaller scale of operation will allow greater opportunity to observe and make adjustments to the program before expanding it. Further, implementing the program at its full capacity would increase the likelihood that a proposed and final rule be published prior to implementation, instead of a Notice of Availability. This would eliminate RMA's ability to modify the program expeditiously in its early stages. Therefore, no change has been made.

Comment: One broker suggested that the separate billing scheme would detract from the realism of the producer's experience.

Response: In any subsidized program, the producer will not receive a perfectly realistic free-market experience. By using a billing scheme that bills RMA for the subsidized portion of the transaction, RMA has enhanced the speed and efficiency of the payment system. A 72 hour turn around time is required by brokers under their industry regulations. Other alternatives such as asking producers to put up the money and be reimbursed later, or advancing funds to the producer to conduct DOPP trades were considered. However, the former alternative was rejected on the grounds that it would negatively impact participation due to the limited working capital of many small dairy producers. The latter was deemed to subject the program to increased risk of misuse of funds while significantly complicating the compliance audit process. Further, timeliness of trading and compliance information will play a critical role as RMA evaluates the program for program expansion and relocation. Therefore, no change has been made.

Comment: One cooperative suggested that 6 months is too short a period for the program to last for each participant and stated that 12 months is better.

Response: The program can actually last as long as 8 months from the date of the producer's attendance at the required training class. RMA determined that an 8 month time period encompasses enough of the dairy marketing cycle to enable the producer to implement and complete a useful price risk hedge and allow the producer to decide whether to continue utilizing this risk management strategy. Therefore, no change has been made.

Comment: One state government employee commented that RMA should clarify that producers cannot buy options on more milk than they produce over six months.

Response: RMA has added a provision that specifies that producers cannot purchase put options for more production than the producer has documents to prove was produced during the 6 month period.

Comment: Two brokers suggested that RMA should clarify the flow of funds.

Response: RMA has clarified that RMA and the producer will make their respective required payments directly to the broker.

Comment: One broker suggested that funds should be committed to subsidize additional floor brokers (market makers) to ensure continued viability of the program.

Response: New floor brokers should naturally gravitate toward the BFP contracts in response to the new volume the program will provide. Therefore, no change has been made.

Comment: One association of dairy cooperatives suggested that DOPP should be funded for three years to allow a diverse group of producers to participate.

Response: RMA has received funding approval to operate the program for three years.

Comment: One association suggested that the requirement that producers cannot exercise or sell an option until the four weeks prior to expiration should be eliminated or modified.

Response: Previous options pilot programs administered by USDA were criticized for failing to educate producers by permitting them to sell their options the same day they obtained them. In order to maximize the educational experience in hedging strategies, the producer should hold a position until the month they are actually hedging. To allow the sale of the option before that time may re-expose the producer to price risk for the rest of time before the expiration date.

RMA will take this into consideration as it conducts its ongoing evaluation of the program and make such changes as are necessary. Therefore, no change has been made.

Comment: One association suggested that RMA should clarify the reporting requirement for participation.

Response: The only reporting requirements for eligibility is that producers must report their milk production history for 6 months to establish that they meet the 100,000 pounds of production during a consecutive 6 month period within the previous 12 month period and maintaining the record of each transaction to ensure that the maximum amount of production for which options may be purchased under the program is not exceeded. These requirements are clearly stated. Therefore, no change has been made.

Comment: One producer perceived the program as Federally sponsored gambling and suggested the program be abolished prior to implementation.

Response: Futures and options contracts are widely recognized risk management tools. The intent of DOPP is simply to educate producers on the use of these tools. While there is some risk involved, the value of these risk management tools, which after DOPP expires is at no cost to the taxpayers, outweighs the risks. Therefore, no change has been made.

In addition to the changes described above, and minor reformatting and word changes for clarity, RMA has made the following changes to DOPP:

1. In section 1 of the producer contract, RMA added definitions of ''hedge,'' ''round turn,'' ''Secretary,'' ''strike month,'' and ''USDA'' for clarification.

2. In section 2(a)(4) of the producer contract, RMA reduced the minimum production in a consecutive 6 month period to be eligible for the program from 200,000 pounds to 100,000. This change will ensure that smaller producers are not excluded from the program.

3. In section 2 of the producer contract, RMA added a provision that requires the producer to execute the DOPP contract and comply with all its terms and conditions in order to permit enforcement of program requirements.

4. In section 3(a)(2) of the producer contract and broker agreement, RMA reduced the amount of milk upon which producers must purchase put options from 200,000 pounds to 100,000 to allow smaller producers to participate. RMA also added a provision that specifically states that options on no more than 600,000 pounds of milk production can be purchased by any producer. This requirement is intended to limit the potential costs of the program until such a time that its viability can be assessed.

5. In section 3 of the producer contract and broker agreement, RMA clarified when put options may be sold or exercised and has included an example.

6. In section 3(b) of the producer contract, RMA added a provision requiring the producer to submit the application to RMA within 30 days after receiving notification and application materials from RMA through the mail so that RMA can timely select producers to participate in the program and reallocate any unfilled slots.

7. In section 5(a) of the producer contract, RMA reduced the number of producers allowed to participate in each county from 150 to 100. This change was based on information indicating that it is unlikely that any county will have more than 100 producers interested in participating. A reduction in the number of participants per county will also allow RMA to increase the number of states participating from 6 to 7, which will allow for a greater geographic representation of milk producers in the program without increasing budget outlays.

8. In section 5(d) of the producer contract and broker agreement, RMA deleted the requirement that no put option could be purchased at a premium that was more than 160 percent of the previous day's settlement premium because such limits could routinely be exceeded under normal trading situations.

9. In section 6(d) of the producer contract, RMA added a new provision that authorized the Chicago Mercantile Exchange and Coffee, Sugar, and Cocoa Exchange to replace BFP options contracts with options contracts based on a milk price index other than the BFP in order to provide greater flexibility into the program. This change is necessary because USDA may stop publishing the BFP at some point in the future.

10. In section 1 of the broker agreement, RMA added definitions of ''hedge,'' ''Secretary,'' ''strike month,'' and ''USDA'' for clarification.

11. In section 2 of the broker agreement, RMA added provisions that require the broker to attend at least one DOPP training session and have specified hardware and software to electronically receive and transmit data to RMA to be eligible to participate.

12. In section 3 of the broker agreement, RMA added provisions specifying that brokers cannot allow producers to purchase a DOPP option that expires during a month that is more than 6 months after the month of purchase for that option in order to protect the integrity of the program.

13. In section 3 of the broker agreement, RMA also added a provision specifying the applicable sanctions if the broker fails to comply with the terms and conditions of the broker agreement.

14. In section 3 of the broker agreement, RMA deleted the provision mandating that brokers cannot accept an application unless the producer's marketing receipts show the requisite production since RMA will be accepting the applications.

RMA will enter into contracts with producers and brokers who elect to participate in DOPP.

Notice: The terms and provisions for the DOPP Producer Contract are as follows:

United States Department of Agriculture

Risk Management Agency

Dairy Options Pilot Program Contract

Participation in the Dairy Options Pilot Program is voluntary. Neither the United States, the Commodity Credit Corporation, the Risk Management Agency, the Department of Agriculture, nor any other Federal agency is authorized to guarantee that participants in this pilot program will be better or worse off financially as a result of participation in the pilot program than the producer would have been if the producer had not participated in the pilot program.

1. Definitions.

Application. Form CCC–320 that is required to be completed and signed by the producer before the producer is eligible to participate in this program.

Basic formula price (BFP). The price established by USDA, and provided to the USDA marketing order administrators to be used to set regional minimum prices.

Broker. A broker or brokerage firm registered under the Commodities Exchange Act that has entered into an agreement with RMA to participate in the program.

CME. Chicago Mercantile Exchange.

CSCE. Coffee, Sugar, and Cocoa Exchange.

DOPP. Dairy Options Pilot Program.

Eligible markets. Commodity futures and options markets designated as contract markets under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*).

Exercise. The action taken by the holders of a put option on a futures contract if they wish to sell the underlying futures contract.

Expiration date. The last date on which the put option may be exercised.

Futures contract. A contract to buy or sell a commodity on an eligible market at some point in the future.

Hedge. To take compensatory measures to counter a possible loss.

Open outcry. Method of public auction required to make bids and offers in the trading pits, or rings, of commodity exchanges.

Out-of-the-money. Put option whose strike price is less than the underlying futures contract price.

Premium. The price of a put option determined by open outcry. The premium does not include related brokerage commission fees.

Producer. An individual, entity, or joint operation, which as owner, operator, landlord, tenant, or sharecropper, is entitled to share in the production available for marketing from the farm, or share in the proceeds thereof.

Program. The Dairy Options Pilot Program.

Put option. A contract traded on eligible markets that gives the buyer the right to sell the underlying futures contract at the strike price on or before the expiration date.

RMA. Risk Management Agency, an agency of the United States Department of Agriculture.

Round turn. The broker's service in transacting a single put option consisting of consultation services and the purchase and liquidation (sale or exercise) of a put option, including the subsequent sale of the underlying futures position if the put option is exercised.

Sale. Transfer of title through the selling of the value of the put option.

Secretary. The Secretary of Agriculture.

Settlement price. The price of a specific put option as published by the exchange on which that contract trades at the end of each day's trading.

Strike month. The month preceding the month in which a DOPP options contract expires, *e.g.,* the strike month for a DOPP option contract that expires in March would be February.

Strike price. The price at which the holder of a put option may sell the underlying futures contract.

USDA. The United States Department of Agriculture.

2. Eligibility.

(a) To be eligible for any benefits under this contract, a producer must:

(1) Be eligible for a production flexibility contract, a marketing assistance loan or any other assistance under title I of the Federal Agriculture Improvement and Reform Act of 1996;

(2) Volunteer to participate in this program;

(3) Operate a farm located in a county selected for the pilot program; and

(4) Have documented production history of at least 100,000 pounds of production over any consecutive six month period during the most recent 12 months.

(b) This program is available to producers in states and counties designated.

(c) Execute this contract and comply with its terms and conditions.

3. Responsibilities.

(a) Producers who elect to participate in the program agree:

(1) To attend not less than one training session conducted by RMA to educate the producer on the use of put options and the program's operations;

(2) To buy all put options on a minimum of 100,000, and a maximum of 600,000, pounds of milk on an eligible market, through an eligible broker, within 2 months after the date the producer attends the required training session;

(3) That put options on no more than 200,000 pounds of milk will be purchased for any one strike month under this program;

(4) That put options on no more than the producer's total average production over the 6-month period used to establish the producer's eligibility shall be purchased under this program (For example, if a producer has provided copies of marketing receipts for 245,000 pounds of milk production eligible for the program, only 200,000 pounds can be hedged under the program because there are no 45,000 pound contracts or less currently available on the market);

(5) That the producer shall not purchase a DOPP option that expires on a date that is less than 2 months after the date the DOPP option was purchased (For example, assume the producer wants to hedge August 1998 production with BFP put options. The last date on which he or she shall be able to purchase an August option is Friday, July 3, because the August options expire exactly two months later, September 3. On July 4, the earliest option the producer could purchase is the September contract);

(6) That the put options will be purchased at a strike price that is at least 10 cents out of the money;

(7) That no put options will be sold or exercised before four weeks prior to the expiration date (For example, the BFP is announced by the USDA on the fifth of the month following the strike month, which is not on a weekend or Federal holiday. The September BFP will be announced by USDA on Monday, October 5, 1998. The September BFP option expires on the last day of trading of the September BFP futures contract, which is the day before the date of the BFP's announcement, or in this case, October 2, 1998 (October 4 is a Sunday). For purposes of DOPP, the four week period leading up to October 2, 1998, will begin on September 4, 1998. Therefore, a DOPP participant holding a September BFP put option would be free to sell or exercise that option at his or her discretion between September 4, 1998, and the expiration date. If the producer exercises the put option and holds the futures contract, the producer assumes the risk of any loss); and

(8) That all options purchased shall expire during the month that is not more than 6 months after the month of purchase. For example, assume a producer is trained on June 4, 1998, and makes all purchases in the months of June and July. The latest option contract the producer is permitted to buy is the December 1998 contract, which expires in January, 1999.

(b) The producer must open an account with an eligible broker in order to participate in the program and must do so before making any purchases.

(c) The producer must submit a properly completed and executed application and a copy of the marketing receipts for 6 consecutive months in the previous 12 months showing production in excess of 100,000 pounds to RMA within 14 days after receiving notification and application materials from RMA through the mail.

4. Costs.

(a) The producer will pay 20 percent of the premium of each put option to the broker.

(b) RMA shall pay transactions costs not to exceed $30 per round turn and 80 percent of the premium to the broker on behalf of the producer. The producer is free to deal with brokers who charge more than $30 per round turn, but the producer will be responsible for any amount that exceeds $30.

5. Restrictions and limitations.

(a) Except as stated herein, total program participation will be limited to 100 producers per county. If more participants are enrolled than the county limit, a lottery will be held by RMA to determine participants within a county. If fewer than 100 participants are enrolled in a county, the number of unfilled participation slots will be pooled and redistributed over counties where enrollment exceeds 100.

(b) The producer will be able to order put options from a broker after the broker has obtained verification from RMA of the producer's selection as a program participant and the date the producer received training. Verification will take place electronically after the producer selects an eligible broker.

(c) No producer may participate in the program more than once.

(d) If a producer who has participated in the program is not in compliance with the provisions of this contract, the producer will be required to repay any premiums and broker fees paid by RMA on behalf of the producer.

(e) This agreement is not effective until the producer executes and returns forms CCC–320, with supporting documentation of milk marketing, and CCC–321, and the producer receives written notice from RMA that the producer has been accepted into the program.

6. Other.

(a) The National Futures Association, on behalf of the Commodity Futures Trading Commission, maintains a current listing of brokers and brokerage firms who are licensed to conduct futures-related business. However, only those brokers who have entered into an agreement with RMA will be eligible to trade put options under this program.

(b) To assist in the evaluation of the program, producers participating in the program may be asked to complete entry and exit surveys by RMA. While completion of these surveys is voluntary, producers are encouraged to do so in order that an accurate assessment may be made of this program's overall effectiveness.

(c) There may be tax consequences with respect to participation in this program. Producers interested in participating in the program who have questions regarding the tax issues associated with this program should seek the advice of a tax advisor.

(d) The CME or the CSCE could replace BFP options contracts with options contracts on another milk price index. The program will permit the trading of options contracts on another milk price index selected by the CME or the CSCE.

Notice: The terms and conditions for the DOPP broker agreement are as follows:

United States Department of Agriculture

Risk Management Agency

Broker Agreement for the Dairy Options Pilot Program

1. Definitions.

Application. Form CCC–320 that is required to be completed and signed by the producer before the producer is eligible to participate in this program.

Basic formula price. The price established by USDA, and provided to USDA's marketing order administrators to be used to set regional minimum prices.

Broker. A broker or brokerage firm registered under the Commodities Exchange Act that has entered into an agreement with RMA to participate in the program.

CME. Chicago Mercantile Exchange.

CSCE. Coffee, Sugar, and Cocoa Exchange.

DOPP. Dairy Options Pilot Program.

Eligible markets. Commodity futures and options markets designated as contract markets under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*).

Exercise. The action taken by the holders of a put option on a futures contract if they wish to sell the underlying futures contract.

Expiration date. The last date on which the put option may be exercised.

Futures contract. A contract to buy or sell a commodity on an eligible market at some point in the future.

Hedge. To take compensatory measures to counter a possible loss.

Open outcry. Method of public auction required to make bids and offers in the trading pits, or rings, of commodity exchanges.

Out-of-the-money. Put option whose strike price is less than the underlying futures contract price.

Premium. The price of a put option determined by open outcry. The premium does not include related brokerage commission fees.

Producer. An individual, entity, or joint operation, which as owner, landlord, tenant, or sharecropper, is entitled to share in the production available for marketing from the dairy farm, or share in the proceeds thereof.

Program. The Dairy Options Pilot Program.

Put option. A contract traded on eligible markets that gives the buyer the right to sell the underlying futures contract at the strike price on or before the expiration date.

RMA. Risk Management Agency, an agency of the United States Department of Agriculture.

Round turn. The broker's service in transacting a single put option consisting of consultation services and the purchase and liquidation (sale or exercise) of a put option, including the subsequent sale of the underlying futures position if the put option is exercised.

Sale. Transfer of title through the selling of the value of the put option.

Secretary. The Secretary of Agriculture.

Settlement price. The price of a specific put option as published by the exchange on which that contract trades at the end of each day's trading.

Strike month. The month preceding the month in which a DOPP options contract expires, *e.g.,* the strike month for a DOPP options contract that expires in March would be February.

Strike Price. The price at which the holders of a put option may choose to sell the underlying futures contract.

USDA. The United States Department of Agriculture.

2. Eligibility.

(a) To be eligible to trade options under this agreement a broker must:

(1) Be properly licensed and in good standing with the National Futures Association;

(2) Volunteer to participate in this program;

(3) Attend at least one DOPP training session;

(4) Have the following hardware and software and service in order to operate the DOPP communications software: Internet Service Provider; Internet E-mail address; a Windows 95 PC; Internet Browser, either Microsoft Internet Explorer or Netscape; minimum 28.8 modem; minimum 8 meg RAM, (16 meg recommended); and

(5) Execute this agreement and comply with all its terms and conditions.

3. Responsibilities.

(a) Brokers who elect to participate in the program agree to enforce the following program requirements with respect to any producer participating in the program who might use the broker's services:

(1) To buy all put options on a minimum of 100,000 and a maximum of 600,000, pounds of milk on an eligible market within 2 months after the date the producer attends the required training session;

(2) That put options on no more than 200,000 pounds of milk will be purchased for any one strike month under this program;

(3) That put options on no more than the producer's total production over the 6-month period used to establish the producer's eligibility of production shall be purchased under this program;

(4) That the producer shall not purchase a DOPP option that expires on a date that is less 2 months after the date the DOPP options contract was purchased (For example, assume the producer wants to hedge August 1998 production. The last date on which he or she shall be able to purchase an August option is Friday, July 3, because the August options expire exactly two months later, September 3. After July 3, the earliest option the producer could purchase is the September contract);

(5) That the put options will be purchased at a strike price that is at least 10 cents out of the money;

(6) That no put options will be sold or exercised before four weeks prior to the expiration date (For example, the BFP is announced by the USDA on the fifth of the month following the strike month, which is not on a weekend or Federal holiday. The September BFP will be announced by USDA on Monday, October 5, 1998. The September BFP option expires on the last day of trading of the September BFP futures contract which is the day before the date of the BFP's announcement, or in this case, October 2, 1998 (October 4 is a Sunday). For purposes of DOPP, the four week period leading up to October 2, 1998, will begin on September 4, 1998. Therefore, a DOPP participant holding a September BFP put option would be free to sell or exercise that option at his or her discretion between September 4, 1998, and the expiration date. If the producer exercises the put option and holds the futures contract, the producer assumes the risk of any loss); and

(7) That all options purchased shall expire during the month that is not more than 6 months after the month of purchase (For example, assume a producer is trained on June 4, 1998, and makes all purchases in the months of June and July. The latest option contract the producer is permitted to buy is the December 1998 contract, which expires in January, 1999).

(b) The broker must keep detailed records on each transaction and transmit that information to RMA through electronic data transmission. The broker will be provided with communications software for this purpose by RMA. Records required include:

(1) The purchase date, time, and premium for each put option;

(2) The expiration date and strike month for each put option; and

(3) Whether the options are sold or exercised and, if sold or exercised, the date, and price of the futures contract on the date of sale or exercise and the time of the transaction.

(c) Brokers certify that systems used to transmit data will be year 2000 compliant, i.e., be able to accurately process date and time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the years 1999 and 2000 and leap year calculations, and to properly exchange date and time data with other information technology. Data transmission requirements and year 2000 compliance guidelines are available upon request.

(d) The broker cannot permit a producer to purchase a DOPP option until RMA has electronically notified the broker that the producer has been accepted into the program, the amount of milk for which the producer has provided production records, and the date on which the producer fulfilled the training requirements.

(e) If a broker participating in the program through this agreement is not in compliance with the provisions of this agreement, the broker will be required to repay any broker fees and premiums paid by RMA on options contracts traded by the broker under the program.

4. Costs.

(a) Up to $30 per round turn in broker fees will be paid by RMA. Any transactions costs agreed upon between the broker and a producer in excess of $30 will be the sole responsibility of the producer and not of RMA.

(b) The broker will charge the producer's account for 20 percent of the premium per put option. The 20 percent of the transaction for which the producer is responsible is the sole responsibility of the producer and not of RMA.

(c) The broker will bill transaction costs not to exceed $30 and the balance of the premium, 80 percent, to RMA. RMA will pay these amounts via the automated clearing

house (ACH) payments process within three banking days after RMA's acceptance of the transaction. Transactions will be considered accepted after RMA systems verify that the broker and participant have been selected for participation in the program, and that the transaction does not violate the trading limitations of the program itemized in Section 3 above.

5. Program changes.

(a) The broker acknowledges that, due to the pilot nature of this program, on-going modifications may be necessary. The broker agrees to abide by reasonable changes in the program by RMA.

(b) The CME or the CSCE could replace BFP options contracts with options contracts on another milk price index. The program will permit the trading of options contracts on a new milk price index selected by the futures exchanges at that time.

Signed in Washington, D.C., on November 2, 1998.

Kenneth D. Ackerman,

Administrator, Risk Management Agency.

[FR Doc.98–29724 Filed 11–5–98; 8:45 am]

BILLING CODE 3410–08–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 7, 1998.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Janitorial/Custodial, Federal Bureau of Prisons HOLC Federal Building, 320 First Street, NW, Washington, DC, NPA: The Chimes, Inc., Baltimore, Maryland.

Janitorial/Grounds Maintenance, U.S. Courthouse and Federal Building, Carleton Avenue & North Spur Drive, Central Islip, Long Island, New York, NPA: The Corporate Source, Inc., New York, New York.

Microfilming, Department of Treasury, Financial Management Services, Hyattsville, Maryland, NPA: Didlake, Inc., Manassas, Virginia.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Block, Currency Packing

BEP Stock #L–1391

Cover, Mattress

7210–00–171–1091
7210–00–998–7745

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–29807 Filed 11–5–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: December 7, 1998.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 14 and September 25, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 F.R. 43660, 51336 and 51337) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities.

The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Tape, Measuring

5210–00–086–4988
5210–00–182–4797
5210–00–150–2920

Services

Janitorial/Custodial, Army Research Laboratory (ARL), Adelphi Laboratory Center (ALC), 2800 Powder Mill Road, Adelphi, Maryland

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Cleaner, Tobacco Pipe

M.R. 204

Stool

P.S. #127–A
P.S. #127–B
P.S. #127–C
P.S. #127–D

Pad, Typewriter

7510–00–849–1137
7510–00–530–6412
7510–00–257–2576

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–29808 Filed 11–5–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Survey of U.S. Chemical Industry To Assist in Compliance Activities Regarding Certain Provisions of the Chemical Weapons Convention

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 5, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental 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 Dawn Battle, Department of Commerce, 14th & Constitution Ave., NW, room 6877, Washington, DC, 20230 (telephone number (202) 482–0637).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Chemical Weapons Convention (CWC) is a multilateral arms control treaty that seeks to achieve an international ban on chemical weapons (CW). The CWC was signed by the United States in Paris on January 13, 1993, and was submitted by President Clinton to the United States Senate on November 23, 1993, for its advice and consent to ratification. The CWC prohibits, *inter alia*, the use, development, production, acquisition, stockpiling, retention, and direct or indirect transfer of chemical weapons.

The information that will be collected by this survey is necessary in order to assist efforts by U.S. government officials to ensure that the U.S. is and will be in compliance with certain provisions of the Chemical Weapons Convention (CWC) Treaty.

The CWC, after enactment of U.S. implementing legislation and promulgation of appropriate agency regulations, prohibits all individuals and legal entities (e.g. corporations) within the U.S., as well as all individuals outside the U.S. possessing U.S. citizenship, from engaging in activities prohibited under the Convention.

The proposed new information collection by BXA will attempt to survey, by telephone, private companies either known or suspected to have activities involving Schedule 1 chemicals. The additional data obtained from the proposed survey will enable BXA to determine whether the information collection activities already approved by OMB are all that are needed, for the time being, to monitor U.S. compliance with the 1 metric ton limit.

BXA intends to use the CWC Schedule 1 chemical survey to obtain data from those U.S. facilities that are believed to be engaged in the production, acquisition, stockpiling, transfer, or use of chemicals listed in Schedule 1 of the CWC. The facilities that are asked to participate in the survey will be requested to respond, regardless of the amount of Schedule 1 chemicals that they produce, acquire, stockpile, transfer, or use.

BXA will use the data obtained from the survey, as well as data obtained from other sources, in order to determine whether or not it needs to impose additional information collection burdens on the U.S. chemical industry in order to accurately determine U.S. compliance with Part VI.A.2 of the Annex on Implementation and Verification of the CWC, which limits the aggregate amount of Schedule

1 chemicals that may be produced, acquired, retained, transferred, or used by any state party in a single calendar year to 1 metric ton (i.e. 1 million grams).

II. Method of Collection

Telephone survey.

III. Data

OMB Number: None.
Form Number: N/A.
Type of Review: Submission for new collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 100.
Estimated Time Per Response: 30 minutes per response.
Estimated Total Annual Burden Hours: 50.
Estimated Total Annual Cost: $1,800 for respondents time (no capital 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 will also become a matter of public record.

Dated: October 30, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc.98–29699 Filed 11–5–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 980930252–8252–01]

Special American Business Internship Training Program (SABIT)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This Notice announces availability of funds for the Special American Business Internship Training Program (SABIT), for training business executives and scientists (also referred to as ''interns'') from the NIS. The Department of Commerce, International Trade Administration (ITA) established the SABIT program in September 1990 to assist the former Soviet Union's transition to a market economy. Since that time, SABIT has been matching business executives and scientists from the NIS with U.S. firms which provide them with three to six months of hands-on training in a U.S. market economy.

Under the SABIT program, qualified U.S. firms will receive funds through a cooperative agreement with ITA to help defray the cost of hosting interns. ITA will interview and recommend eligible interns to participating companies. Interns may be from any of the following Independent States: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. The U.S. firms will be expected to provide the interns with a hands-on, non-academic, executive training program designed to maximize their exposure to management or commercially-oriented scientific operations. At the end of the training program, interns must return to the NIS.

DATES: The closing date for applications is January 29, 1999. An original and two copies of the application (Standard Form 424 (Rev. 4–92) and supplemental material) are to be sent to the address designated in the Application Kit and postmarked no later than the closing date. Applications will be considered on a ''rolling'' basis as they are received, subject to the availability of funds. If available funds are depleted prior to the closing date, a notice to that effect will be published in the **Federal Register**. Processing of complete applications takes approximately two to three months. All awards are expected to be made by May 1, 1999.

ADDRESSES: Request for Applications: Competitive Application kits will be available from ITA starting on the day this notice is published. To obtain a copy of the Application Kit please E-mail: sabitapply@usita.gov (please state which format, e.g. WordPerfect© 6.1), telephone (202) 482–0073, facsimile (202) 482–2443 (these are not toll free numbers), or send a written request with two self-addressed mailing labels to Application Request, The SABIT Program, HCHB Room 3319, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230. Only one copy of the Application Kit will be provided to each organization requesting it, but it may be reproduced by the requester.

FOR FURTHER INFORMATION CONTACT: Liesel C. Duhon, Director, SABIT Program, U.S. Department of Commerce, phone—(202) 482–0073, facsimile—(202) 482–2443. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: SABIT exposes NIS business managers and scientists to a completely new way of thinking in which demand, consumer satisfaction, and profits drive production. Senior-level interns visiting the U.S. for internship programs with public or private sector companies will be exposed to an environment which will provide them with practical knowledge for transforming their countries' enterprises and economies to the free market. The program provides first-hand, eye-opening experience to managers and scientists which cannot be duplicated by American managers traveling to their territories.

Managers: SABIT assists economic restructuring in the NIS by providing top-level business managers with practical training in American methods of innovation and management in such areas as strategic planning, financing, production, distribution, marketing, accounting, wholesaling, and labor relations. This first-hand experience in the U.S. economy enables interns to become leaders in establishing and operating a market economy in the NIS, and creates a unique opportunity for U.S. firms to familiarize key executives from the NIS with their products and services. Sponsoring U.S. firms will benefit by establishing relationships with key managers in similar industries who are uniquely positioned to assist their U.S. sponsors do business in the Independent States.

Scientists: SABIT provides opportunities for gifted scientists to apply their skills to peaceful research and development in the civilian sector, in areas such as defense conversion, medical research, and the environment, and exposes them to the role of scientific research in a market economy where applicability of research relates to business success. Sponsoring firms in the U.S. scientific community also benefit from exchanging information and ideas, and different approaches to new technologies.

The Special American Business Internship Training program's Catalog of Federal Domestic Assistance (CFA) number is 11.114.

Funding Availability: 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 United States Agency for International Development (A.I.D). ITA will award financial assistance and administer the program pursuant to the authority contained in section 635(b) of the Act and other applicable Grant rules. The estimated amount of financial assistance available for the program is $ 2 million. At least $800,000 of that amount is reserved for U.S. organizations which host scientists. Additional funding may become available at a future date.

Funding Instrument and Project Duration: Federal assistance will be awarded pursuant to a cooperative agreement between ITA and the recipient firm. All internships are three to six months; however, ITA reserves the right to allow an intern to stay for a shorter period of time (no less than one month) if the U.S. company agrees and the intern demonstrates a need for a shorter internship based on his or her management responsibilities. ITA will reimburse companies for the round trip international travel of each intern from the intern's home city in the NIS to the U.S. internship site, upon submission to ITA of the paid travel invoice, payment receipt, or other evidence of payment and the form SF–270, ''Request for Advance or Reimbursement.'' Travel under the program is subject to the Fly America Act. Recipient firms provide $30 per day directly to interns; ITA will reimburse recipient firms for this stipend of $30 per day per intern, for up to six months, upon submission by company of an end-of-internship report and form SF–270. Recipient firms provide housing for the interns; ITA will reimburse recipient firms for up to $500 per month for housing costs, at the same time as the stipend, and upon submission by company of an end-of-internship report and form SF–270. In general, each award will have a cap of $10,500 per intern for total cost of airline travel, stipend and housing costs. ITA reserves the right to allow an award to exceed this amount in cases of unusually high costs, such as airfare from remote regions of the NIS. However, the total payment cannot exceed the award amount. There are no specific matching requirements for the awards. Host firms, however, are expected to bear the costs beyond those covered by the award, including: visa fees, insurance, any food and incidentals costs beyond $30 per day, any training-related travel within the U.S., and provision of the hands-on training for the interns.

U.S. firms wishing to utilize SABIT in order to be matched with an intern without applying for financial assistance may do so. Such firms will be responsible for all costs, including travel expenses, related to sponsoring the intern. However, prior to acceptance as a SABIT intern, work plans and candidates must be approved by the SABIT Program. Furthermore, program training will be monitored by SABIT staff and evaluated upon completion of training.

Eligibility: Eligible applicants for the SABIT program will include all for profit or non-profit U.S. corporations, associations, organizations or other public or private entities. Agencies or divisions of the federal government are not eligible.

Project Funding Priorities: Applicant proposal must provide an explanation, including description and extent of involvement, in priority business sector(s). While Applicants involved in any industry sector may apply to the program, priority consideration is given to those operating in the following sectors: (a). Agribusiness (including food processing and distribution, and agricultural equipment), (b). Defense conversion, (c). Energy, (d). Environment (including environmental clean-up), (e). Financial services (including banking and accounting), (f). Housing, construction and infrastructure, (g). Medical equipment, supplies, pharmaceuticals, and health care management, (h). Product standards and quality control, (i). Telecommunications, (j). Transportation and (k) Biotechnology.

Evaluation Criteria: Consideration for financial assistance will be given to those SABIT proposals which:

(1). Demonstrate a commitment to the intent and goals of the program to provide practical, on-the-job, non-academic, non-classroom, training: in the case of manager interns, an appropriate management training experience, or, in the case of scientist interns, a practical, commercially-oriented scientific training experience. Include a brief objectives section indicating why the Applicant wishes to provide an internship to a manager(s) or scientist(s) from the NIS, and how the proposed internship would further the purpose of the SABIT program as described above. Also, the Applicant should note how the internship to be provided will respond to the priority needs of senior business managers and scientists in the NIS, as determined by ITA.

(2). Present a realistic work plan describing in detail the training program to be provided to the SABIT intern(s). Work plans must include the proposed internship training activities. The components of the training activities must be described in as much detail as possible, preferably on a week-by-week basis. The description of the training activities should include an account of what the intern's(s') duties and responsibilities will be during the training.

(3). The application should also have a section noting: (a). Whether Applicant is applying to host managers or scientists, or both (and the number of each); (b). the duration of the internship; (c). the location(s) of the internship; (d). the name, address, and telephone number of the designated internship coordinator; (e). name(s) of division(s) in which the intern(s) will be placed; (f). the individual(s) in the U.S. company under whose supervision the intern will train; (g). the anticipated housing arrangements to be provided for the intern(s). Note that housing arrangements should be suitable for mid-and senior-level professionals, and that each intern must be provided with a private room; (h). a statement that the host firm is solidly committed to interns' return to their own countries upon completion of the internships.

(4). Provide a general description of the profile of the intern(s) the Applicant would like to host, including: educational background; occupational/professional background (including number of years and areas of experience); size and nature of organization at which the intern(s) is/are presently employed; preference for the region of the NIS where the intern(s) is/are employed; and whether Applicant is open to sponsoring interns from a variety of NIS countries.

Evaluation criteria 1–4 will be weighted equally.

ITA does not guarantee that it will match Applicant with the profile provided to SABIT.

Selection Procedures: Each application will receive an independent, objective review by one or more three or four-member ITA review panels qualified to evaluate applications submitted under the program. Applications will be evaluated on a competitive, ''rolling'' basis as they are received in accordance with the selection evaluation set forth above. Awards will be made to those applications which successfully meet the selection criteria. If funds are not available for all those applications which successfully meet the criteria, awards will be made to the first applications received which successfully do so. ITA reserves the right to reject any application; to limit the number of interns per applicant; and to waive informalities and minor irregularities in applications received.

The final selecting official reserves the right to make awards based on U.S. geographic and organization size diversity among applicants, as well as to consider priority business sectors (listed in Project Funding Priorities, above) when making awards. Recipients may be eligible, pursuant to approval of an amendment of an active award, to host additional interns under the program. ITA reserves the right to evaluate applicants based on past performance. The Director of the SABIT Program is the final selecting official for each award.

Additional Information: Applicants must submit: (1). Evidence of adequate financial resources of Applicant organization to cover the costs involved in providing an internship(s). As evidence of such resources, Applicant should submit financial statements audited by an outside organization or an annual report including such statements. If these are not available, a letter should be provided from the Applicant's bank or outside accountant attesting to the financial capability of the firm to undertake the scope of work involved in training an intern under the SABIT program. (2). Evidence of a satisfactory record of performance in grants, contracts and/or cooperative agreements with the Federal Government, if applicable. (Applicants who are or have been deficient in current or recent performance in their grants, contracts, and/or cooperative agreements with the Federal Government shall be presumed to be unable to meet this requirement). (3). A statement that the Applicant will provide medical insurance coverage for interns during their internships. Recipients will be required to submit proof of the interns' medical insurance coverage to the Federal Program Officer, before the interns' arrivals. The insurance coverage must include an accident and comprehensive medical insurance program as well as coverage for accidental death, emergency medical evacuation, and repatriation.

Other Requirements: All applicants are advised of the following:

1. No award of Federal funds shall be made to an Applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce (DOC) are made.

2. A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

3. Recipients and subrecipients are subject to all Federal laws and Federal and Departmental regulations, policies and procedures applicable to financial assistance awards.

4. Participating companies will be required to comply with all relevant U.S. tax and export regulations. Export controls may relate not only to licensing of products for export, but also to technical data transfer.

5. Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

6. If applicants incur any costs prior to an award being made, they do solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

7. Past performance: Unsatisfactory performance by an applicant under prior Federal awards may result in an application not being considered for funding.

8. No obligation for future funding: If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

9. Primary Applicant Certifications: All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

(a) Nonprocurement Debarment and Suspension: Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

(b) Drug Free Workplace: Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Government wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

(c) Anti-Lobbying: Funds provided under the SABIT program may not be used for lobbying activities. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

(d) Anti-Lobbying Disclosures: Any applicant that has paid or will pay for lobbying in connection with this award using any funds must submit an SF-LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

10. All primary applicants must also submit a completed Standard Form 424, ''Application for Federal Assistance'' and a Standard Form 424B, ''Assurances—Non-Construction Programs.'' Form CD–511 and Standard Forms 424 and 424B are included in the Application Kit supplied by the SABIT office.

11. Lower Tier Certifications: Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF-LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

12. Indirect Costs: Indirect costs are not allowed under the SABIT program.

13. Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the greatest extent practicable.

14. The following statutes apply to this program: Section 907 of the FREEDOM Support Act, Public Law 102–511, 22 U.S.C. 5812 note (Restriction on Assistance to the Government of Azerbaijan); 7 U.S.C. § 5201 et seq. (Agricultural Competitiveness and Trade—the Bumpers Amendment); The Foreign Assistance Act of 1961, as amended, including Chapter 11 of Part I, section 498A (b) Public Law 102–511, 22 U.S.C. 2295a(b), (regarding ineligibility for assistance); 22 U.S. C. 2420(a), Section 660(a) of The Foreign Assistance Act of 1961, as amended (Police Training

Prohibition); and provisions in the annual Foreign Operations, Export Financing, and Related Programs Appropriations Acts, concerning Use of American Resources, Impact on Jobs in the United States and Commerce and Trade (see, e.g., §§ 546, 538 and 513 respectively of the Foreign Operations, Export Financing, and Related Appropriations Act, 1998, Public Law 105–118).

15. *Audit Requirements:* The DOC Office of Inspector General has authority under the Inspector General Act of 1978, as amended, to conduct an audit of any DOC award at any time.

16. *Payments.* As required by the Debt Collections Improvement Act of 1996, all Federal payments to award recipients pursuant to this announcement will be made by electronic funds transfer.

17. The collection of information is approved by the Office of Management and Budget, OMB Control Number 0625–0225. Public reporting for this collection of information is estimated to be three hours per response, including the time for reviewing instructions, and completing and reviewing the collection of information. All responses to this collection of information are voluntary, and will be protected from disclosure to the extent allowed under the Freedom of Information Act. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Clearance Officer, International Trade Administration, Department of Commerce, Room 4001, 14th and Constitution Ave., N.W., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Special American Business Internship Training, International Trade Administration, at (202)482–0073. This is not a toll free-number.

Dated: November 3, 1998.

Liesel C. Duhon,

Director, SABIT Program.

[FR Doc. 98–29791 Filed 11–5–98; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

Title: Coastal Services Center (CSC): Coastal Resource Management Opportunities, Capabilities, and Needs.

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 January 5, 1999.

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 Nina Petrovich, South Carolina's Sea Grant Coastal Program Coordinator, NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston SC 29405. Phone (843) 740–1203, Email: *npetrovich@csc.noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Three years ago, the Coastal Services Center (CSC) surveyed the coastal resource management community to assess its information management needs and capabilities. CSC has used the results to deliver products in formats that the greatest proportion of the community can use. CSC proposes to repeat this survey every three years (the next one to be conducted in 1999) to assess changes in the community's management capabilities and needs.

The overall objectives of the survey are: to receive feedback from the coastal management community on the relevance, importance, and need of specific proposed products; to give coastal resource managers the opportunity to describe their priority problems and management needs; and to obtain information on the hardware and software platforms and capabilities of the coastal information management community. Results will be used to evaluate the effectiveness and most useful format for delivery of CSC products and services and to set priorities for future programming.

The survey will be conducted in two parts to differentiate between resource management needs and information management needs. Both sections will be sent to the coastal manager, who would be asked to forward the second section to the data/information manager.

(1) Section one will contain general questions about information management problems and opportunities, and about communication pathways and management services.

(2) Section two will ask questions about information management for coastal problems, data/information exchange, and computer-based tools and techniques.

The survey is targeted for release to the coastal community in February 1999, and results will be compiled during the summer months of that year.

II. Method of Collection

The survey will be mailed to clients with an option to respond electronically or by mail.

III. Data

OMB Number: 0648–0308.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions; state, local, or tribal government (coastal managers from the following programs or agencies: Coastal Zone Management Programs, National Estuarine Research Reserve Sites, National Marine Sanctuaries, Sea Grant Institutions, Natural Resource Management Agencies, and National Estuary Programs.

Estimated Number of Respondents: 240.

Estimated Time Per Response: 40 minutes.

Estimated Total Annual Burden Hours: 160.

Estimated Total Annual Cost to Public: $0 (no capital expendiures 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: October 30, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–29698 Filed 11–5–98; 8:45 am]

BILLING CODE 3510–08–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

November 3, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bangladesh and exported during the period January 1, 1999 through December 31, 1999 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1999 period. The 1999 limits for certain categories have been reduced for carryforward applied to the 1998 limits.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	505,495 dozen.
331	1,354,428 dozen pairs.
334	154,215 dozen.
335	276,895 dozen.
336/636	495,508 dozen.
338/339	1,435,433 dozen.
340/640	3,244,886 dozen.
341	2,688,094 dozen.
342/642	479,015 dozen.
347/348	2,419,283 dozen.
351/651	738,646 dozen.
352/652	11,019,845 dozen.
363	27,532,454 numbers.
369–S [1]	1,845,520 kilograms.
634	539,527 dozen.
635	349,551 dozen.
638/639	1,820,392 dozen.
641	1,171,266 dozen.
645/646	427,498 dozen.
647/648	1,521,563 dozen.
847	854,436 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated November 19, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29829 Filed 11–5–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Bulgaria

November 3, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bulgaria and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits. The limit for Category 435 has been reduced for carryforward applied in 1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in Bulgaria and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month limit
410/624	2,738,549 square meters of which not more than 850,058 square meters shall be in Category 410.
433	13,094 dozen.
435	21,975 dozen.
442	15,276 dozen.
444	71,496 numbers.
448	26,980 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated November 19, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29830 Filed 11–5–98 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hungary

November 3, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Hungary and exported during the period January 1, 1999 through December 31, 1999 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1999 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
351/651	290,594 dozen.
410	950,751 square meters.
433	18,030 dozen.
434	15,298 dozen.
435	26,443 dozen.
443	169,371 numbers.

Category	Twelve-month restraint limit
444	54,637 numbers.
448	23,369 dozen.
604	1,438,282 kilograms.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated November 24, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29833 Filed 11–5–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

November 3, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Macau and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Macau and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
219	3,142,347 square meters.
225	10,998,214 square meters.
313	7,855,867 square meters.
314	1,309,311 square meters.
315	3,927,934 square meters.
317	7,855,867 square meters.
326	3,142,347 square meters.
333/334/335/833/834/835.	319,417 dozen of which not more than 168,257 dozen shall be in Categories 333/335/833/835.
336/836	75,708 dozen.
338	411,198 dozen.
339	1,722,361 dozen.
340	389,198 dozen.
341	251,025 dozen.
342	113,563 dozen.
345	69,441 dozen.
347/348/847	973,295 dozen.
350/850	75,708 dozen.
351/851	90,852 dozen.
359–C/659–C [1]	454,253 kilograms.
359–V [2]	151,419 kilograms.
611	3,142,347 square meters.
625/626/627/628/629	7,855,867 square meters.
633/634/635	676,390 dozen.
638/639/838	2,106,297 dozen.
640	149,760 dozen.
641/840	257,398 dozen.
642/842	149,962 dozen.
645/646	351,051 dozen.
647/648	708,176 dozen.
659–S [3]	151,419 kilograms.
Group II	
400–431, 433–438, 440–448, 459pt. [4], 464 and 469pt. [5], as a group.	1,551,104 square meters equivalent.
Sublevel in Group II	
445/446	83,622 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[4] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 9, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29831 Filed 11–5–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

November 3, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Malaysia and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC). In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits. The 1999 limit for Categories 347/348 is being decreased for carryforward applied to the 1998 limit.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following limits:

Category	Twelve-month restraint limit
Fabric Group	
218–220, 225–227, 313-315, 317, 326, 611–O [1], 613/614/615/617, 619 and 620, as a group.	134,499,315 square meters equivalent.
Sublevels within the group	
218	7,716,910 square meters.
219	37,384,140 square meters.
220	37,384,140 square meters.
225	37,384,140 square meters.
226	37,384,140 square meters.
227	37,384,140 square meters.
313	44,586,589 square meters.
314	53,641,038 square meters.
315	37,384,140 square meters.
317	37,384,140 square meters.
326	7,229,250 square meters.
611–O	4,337,550 square meters.
613/614/615/617	42,912,832 square meters.
619	5,783,401 square meters.
620	7,229,250 square meters.
Other specific limits	
200	325,418 kilograms.
237	437,848 dozen.
300/301	3,451,423 kilograms.
331/631	2,369,696 dozen pairs.
333/334/335/835	271,755 dozen of which not more than 163,053 dozen shall be in Category 333 and not more than 163,053 dozen shall be in Category 835.
336/636	527,616 dozen.
338/339	1,308,086 dozen.
340/640	1,523,665 dozen.
341/641	1,974,727 dozen of which not more than 704,485 dozen shall be in Category 341.
342/642/842	472,990 dozen.
345	181,376 dozen.
347/348	523,769 dozen.

Category	Twelve-month restraint limit
350/650	170,579 dozen.
351/651	293,492 dozen.
363	4,597,802 numbers.
435	15,664 dozen.
438–W [2]	12,818 dozen.
442	19,088 dozen.
445/446	30,299 dozen.
604	1,513,372 kilograms.
634/635	921,663 dozen.
638/639	542,928 dozen.
645/646	415,264 dozen.
647/648	1,954,189 dozen of which not more than 1,367,930 dozen shall be in Category 647–K [3] and not more than 1,367,930 dozen shall be in Category 648–K [4].
Group II 201, 222–224, 239pt. [5], 332, 352, 359pt. [6], 360–362, 369pt. [7], 400–431, 433, 434, 436, 438–O [8], 440, 443, 444, 447, 448, 459pt. [9], 464, 469pt. [10], 600–603, 606, 607, 618, 621, 622, 624–629, 633, 643, 644, 649, 652, 659pt. [11], 666, 669pt. [12], 670, 831, 833, 834, 836, 838, 840, 843–858 and 859pt. [13], as a group.	44,117,960 square meters equivalent.

[1] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085

[2] Category 438–W: only HTS numbers 6104.21.0060, 6104.23.0020, 6104.29.2051, 6106.20.1010, 6106.20.1020, 6106.90.1010, 6106.90.1020, 6106.90.2520, 6106.90.3020, 6109.90.1540, 6109.90.8020, 6110.10.2080, 6110.30.1560, 6110.90.9074 and 6114.10.0040.

[3] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20,.1060 and 6113.00.9044.

[4] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2006, 6104.63.2011, 6104.63.2026, 6104.63.2028, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

[5] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[6] Category 359pt.: all HTS numbers except 6406.99.1550.

[7] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[8] Category 438–O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.8020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.9072, 6114.10.0020 and 6117.90.9025.

[9] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6405.99.1505 and 6406.99.1560.

[10] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[11] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[12] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[13] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see the December 22, 1997 directive) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29832 Filed 11–5–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

November 3, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Pakistan and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following limits:

Category	Twelve-month restraint limit
Specific limits	
219	9,024,717 square meters.
226/313	129,440,629 square meters.
237	438,929 dozen.
239pt. [1]	1,895,617 kilograms.
314	6,563,430 square meters.
315	85,003,997 square meters.
317/617	35,270,770 square meters.
331/631	2,688,116 dozen pairs.
334/634	259,256 dozen.
335/635	400,369 dozen.
336/636	526,715 dozen.
338	5,254,913 dozen.
339	1,492,003 dozen.
340/640	702,288 dozen of which not more than 263,357 dozen shall be in Categories 340–D/640–D [2].
341/641	790,073 dozen.
342/642	391,045 dozen.
347/348	873,067 dozen.
351/651	351,143 dozen.
352/652	877,858 dozen.
359–C/659–C [3]	1,580,146 kilograms.
360	5,640,837 numbers.
361	6,559,112 numbers.
363	48,878,391 numbers.
369–F/369–P [4]	2,633,576 kilograms.
369–R [5]	12,290,024 kilograms.
369–S [6]	804,050 kilograms.
613/614	25,630,432 square meters
615	27,266,412 square meters.
625/626/627/628/629	83,859,305 square meters of which not more than 41,929,654 square meters shall be in Category 625; not more than 41,929,654 square meters shall be in Category 626; not more than 41,929,654 square meters shall be in Category 627; not more than 8,675,101 square meters shall be in Category 628; and not more than 41,929,654 square meters shall be in Category 629.
638/639	487,367 dozen.
647/648	924,029 dozen.
666–P [7]	809,891 kilograms.
666–S [8]	4,287,658 kilograms.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[5] Category 369–R: only HTS number 6307.10.2020.

[6] Category 369–S: only HTS number 6307.10.2005.

[7] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[8] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated November 25, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29836 Filed 11–5–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

November 3, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Qatar and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to

the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1999 period. The 1999 limit for Categories 347/348 has been reduced for carryforward applied to the 1998 limit.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Qatar and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	477,565 dozen.
341/641	220,415 dozen.
347/348	513,906 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated November 6, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29835 Filed 11–5–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

November 3, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Turkey and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC), and Memoranda of Understanding (MOUs) dated July 19, 1995 and April 24, 1998, between the Governments of the United States and the Republic of Turkey.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits. The limits for certain categories have been reduced for carryforward applied in 1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 3, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC); and Memoranda of Understanding (MOUs) dated July 19, 1995 and April 24, 1998 between the Governments of the United States and the Republic of Turkey, you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Turkey and exported during the period January 1, 1999 through December 31, 1999, in excess of the following levels of restraint:

Category	Restraint limit
Fabric Group 219, 313–O [1], 314–O [2], 315–O [3], 317–O [4], 326–O [5], 617, 625/626/627/628/629, as a group.	191,145,399 square meters of which not more than 43,680,621 square meters shall be in Category 219; not more than 53,387,425 square meters shall be in Category 313–O; not more than 31,061,775 square meters shall be in Category 314–O; not more than 41,739,262 square meters shall be in Category 315–O; not more than 43,680,621 square meters shall be in Category 317–O; not more than 4,853,401 square meters shall be in Category 326–O, and not more than 29,120,416 square meters shall be in Category 617.

Category	Restraint limit
Sublevel in Fabric Group	
625/626/627/628/629	19,663,562 square meters of which not more than 7,865,424 square meters shall be in Category 625; not more than 7,865,424 square meters shall be in Category 626; not more than 7,865,424 square meters shall be in Category 627; not more than 7,865,424 square meters shall be in Category 628; and not more than 7,865,424 square meters shall be in Category 629.
Limits not in a group	
200	1,843,054 kilograms.
300/301	8,973,700 kilograms.
335	387,457 dozen.
336/636	912,676 dozen.
338/339/638/639	5,369,028 dozen of which not more than 4,832,126 dozen shall be in Categories 338–S/339–S/638–S/639–S [6].
340/640	1,659,062 dozen of which not more than 471,858 dozen shall be in Categories 340–Y/640–Y [7].
341/641	1,638,402 dozen of which not more than 573,440 dozen shall be in Categories 341–Y/641–Y [8].
342/642	1,015,998 dozen.
347/348	5,527,718 dozen of which not more than 1,922,780 dozen shall be in Categories 347–T/348–T [9].
350	544,420 dozen.
351/651	870,434 dozen.
352/652	3,152,300 dozen.
361	1,830,351 numbers.
369–S [10]	2,002,784 kilograms.
410/624	1,119,683 square meters of which not more than 737,423 square meters shall be in Category 410.
448	38,420 dozen.
604	2,311,800 kilograms.
611	57,834,003 square meters.

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[7] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[8] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054; Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[9] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[10] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 22, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–29834 Filed 11–5–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0390]

Information Collection Requirements; Defense Federal Acquisition Regulation Supplement; Taxes

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement, and seeks public comment on the provisions thereof. 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 will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. This information collection requirement is currently approved by the Office of Management and Budget (OMB) for use through August 31, 1999. DoD proposes that OMB extend its approval for use through August 31, 2002.

DATES: Consideration will be given to all comments received by January 4, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection requirement should be sent 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 OMB Control Number 0704–0390 in all correspondence related to this issue. E-mail comments should

cite OMB Control Number 0704–0390 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, at (703) 602–0131. A copy of this information collection requirement is available electronically via the Internet at: http://www.acq.osd.mil/dp/dars/dfars/html

Paper copies may be obtained from Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Forms, and OMB Control Number: Taxes—Defense Federal Acquisition Regulation Supplement (DFARS) Part 229, and related clauses at 252.229, OMB Control Number 0704–0390.

Needs and Uses: This information collection is used by DoD to determine if DoD contractors in the United Kingdom have attempted to obtain relief from customs duty on vehicle fuels in accordance with contract requirements.

Affected Public: Businesses or other for-profit institutions.

Annual Burden Hours: 68.

Number of Respondents: 17.

Responses per Respondent: 1.

Number of Responses: 17.

Average Burden per Response: 4 hours.

Frequency: On occasion.

Summary of Information Collection

The clause at DFARS 252.229–7010, Relief from Customs Duty on Fuel (United Kingdom), is prescribed at DFARS 229.402–70(j), for use in solicitations issued and contracts awarded in the United Kingdom that require the use of fuels (gasoline or diesel) and lubricants in taxis or vehicles other than passenger vehicles. The clause requires the contractor to submit to the contracting officer evidence that an attempt to obtain relief from customs duty on fuels and lubricants has been initiated.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 98–29775 Filed 11–5–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

[OMB Control No. 9000–0141]

Proposed Collection; Comment Request for Buy American Act—Construction (Grimberg Decision)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0141).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Buy American Act—Construction (Grimberg Decision). The clearance currently expires on February 28, 1999.

DATES: Comments may be submitted on or before January 5, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Federal Acquisition Policy Division, GSA, (202) 501–1757.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clauses at FAR 52.225–5, Buy American Act—Construction Materials, and FAR 52.225–15, Buy American Act—Construction Materials under Trade Agreements Act and North American Free Trade Agreement, provide that offerors/contractors requesting to use foreign construction material, other than construction material eligible under a trade agreement, shall provide adequate information for Government evaluation of the request. These regulations implement the Buy American Act for construction (41 U.S.C. 10a–10d).

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *2.5* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *500;* responses per respondent, *2;* total annual responses, *1,000;* preparation hours per response, *2.5;* and total response burden hours, *2,500.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain a copy of justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0141 regarding Buy American Act—Construction (Grimberg Decision) in all correspondence.

Dated: November 3, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–29742 Filed 11–5–98; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

Department of the Army

Draft Legislative Environmental Impact Statement for the Withdrawal Renewal of Fort Wainwright Yukon Training Area and Fort Greely West Training Area and Fort Greely East Training Area, Alaska

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the Draft legislative Environmental Impact Statement (DLEIS) for the renewed withdrawal of Fort Wainwright Yukon Training Area (formerly known as the Fort Wainwright Maneuver Area) and Fort Greely West Training Area (formerly known as the Fort Greely Maneuver Area) and Fort Greely East Training Area (formerly known as the Fort Greely Air Drop Zone) from public use for military purposes. The lands are located near Fairbanks, Alaska.

The Military Lands Withdrawal Act (Pub. L. 99–606, enacted by Congress on November 6, 1986) identified Fort Wainwright Maneuver Area (now known as Fort Wainwright Yukon Training Area) and Fort Greely Maneuver Area (now known as the Fort Greely West Training Area) and Fort

Greely Air Drop Zone (now known as Fort Greely East Training Area) as lands withdrawn from public use until November 6, 2001. If the Army intends to continue use beyond this time, the Act requires the Army to publish a Draft Environmental Impact Statement by November 6, 1998.

DATES: Comments should be received no later than February 7, 1999.

ADDRESSES: To obtain copies of the DLEIS, contact Mr. Doug Johnson, Directorate of Public Works, ATTN: APVR–RPW–EV, 730 Quartermaster Road, Fort Richardson, AK 99505–6500.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Johnson at (907) 384–3090, fax: (907) 384–3047 or Ms. Cindy Herdrich, Center for Ecological Management of Military Lands (CEMML), Colorado State University, Vocational Education Building, Fort Collins, CO 80523; telephone: (970) 491–2728, fax: (970) 491–2713.

SUPPLEMENTARY INFORMATION: The Fort Wainwright Yukon Training Area comprises approximately 246,277 acres near Fairbanks, Alaska. The Fort Greely West and East Training Areas comprise approximately 623,585 acres near Delta Junction, Alaska. These areas were withdrawn from public use from the Bureau of Land Management (BLM) for military purposes with the enactment of the Military Lands Withdrawal Act on November 6, 1986. The Act specifies these lands are reserved for use by the Secretary of the Army for military maneuvering, training, artillery firing, aerial gunnery, infantry tactics, equipment development and testing, as well as other defense related purposes. The withdrawal renewal lands are used to train in an extremely cold environment, and to test the effect of this environment on military equipment. The Fort Wainwright Yukon Training Area and Fort Greely West and East Training Areas are used by the Army and Air Force. The Army and BLM jointly manage the natural resources on the withdrawal renewal lands recognizing their primary military role.

The Department of the Army has determined there is a continuing military requirement for the use of these withdrawal lands to train and maintain military units at the required state of readiness. The preferred alternative proposes to renew the existing military withdrawals for 50 years until November 6, 2051. The proposed 50-year withdrawal period is approximately the same length of time the military will have used these lands when the existing withdrawals expire in 2001.

Under the no action alternative considered in the DLEIS, Congress would not grant the requested withdrawal renewals. The lands would no longer be available for military use after November 5, 2001.

The Army conducted scoping on the DLEIS to inform the public of the proposed action, identify significant issues, and develop alternatives related to the proposed withdrawal renewal. Federal, State, local agencies, and the public were invited to participate in the scoping process. Public scoping meetings were held in Delta Junction, Fairbanks, and Anchorage in June and December 1997.

Significant issues identified during the scoping process and included in the impact analysis of the DLEIS are public access, air quality, military contamination of soils and surface water, noise, ownership of submerged lands, and wildlife and their habitat.

Public meetings are tentatively scheduled for January 1999 in Delta Junction, Fairbanks, and Anchorage to receive comments on the DLEIS. Notification of specific times and locations for the public meetings will be published in local newspapers. Written comments on the DLEIS will be accepted from publication of the Notice of Availability through 30 days following the public meetings. All comments will be addressed in the Final Legislative Environmental Impact Statement. All interested individuals, organizations, and governmental agencies are encouraged to comment on the DLEIS.

Written comments may be forwarded to Ms. Cindy Herdrich at the above address or at http://www.cemml.colostate.edu/alaskaeis.

Dated: November 2, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environmental, Safety, and Occupational Health) OASA (I,L&E).

[FR Doc. 98–29747 Filed 11–5–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision (ROD) for Environmental Impact Statement (EIS) for Projects and Activities Associated With Programs at White Sands Missile Range, New Mexico

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This notice of availability announces the public release of a ROD resulting from a recently completed EIS for White Sands Missile Range, New Mexico. A summary of the ROD is provided in the supplementary information paragraph below.

ADDRESSES: To receive a copy of the ROD contact the Commander, White Sands Missile Range, ATTN: STEWS–NRES–C (Mr. Robert J. Andreoli), White Sands Missile Range, NM 88002–5048.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Andreoli at (505) 678–7926.

SUPPLEMENTARY INFORMATION: White Sands Missile Range is an extensive and complex test range. It consists of launch sites, target areas, instrumentation, buildings, equipment, and personnel used by DoD, the National Aeronautics and Space Administration, and other Federal and commercial testing concerns to conduct safe, large-scale experiments on advanced weapons and space flight systems. In accordance with the National Environmental Policy Act, White Sands prepared an EIS to address environmental quality implications of implementing projects and activities on the missile range. The decision resulting from the findings of the EIS is to adopt specific mitigation measures for the continuation of existing White Sands Missile Range programs and future testing of scientific, military, and commercial systems.

Mitigation measures, in addition to those specifically identified in the EIS, will be developed by use of the White Sands Missile Range Decision Analysis System and Geographic Information System (DAS/GIS) during the planning stage and will assist in planning projects so as to minimize environmental impacts. White Sands has management practices for the conservation of sensitive natural resources, including wildlife, endangered species, and wetlands. Best management practices and common erosion control techniques will be used in ground disturbed activities.

These same mitigation measures will be integrated into the DAS/GIS and will provide project proponents with environmental information, site location decision support, and regulatory approval at significant cost savings and with improved efficiency. As a result, White Sands will be better able to protect, restore, and enhance the range environment as it more effectively supports its operational mission.

The White Sands EIS lacks some baseline documentation and impacts analysis information and is to be rectified by the preparation of Technical Support Documents (TSDs). TSDs are to be prepared for: water resources analysis; emissions analysis (including

analyses of noise, electromagnetic interference, lasers, light emissions and light pollution, radio astronomy interference, and Global Positioning System interference); an integrated natural resource management plan; chaff analysis; and cumulative impacts analysis. TSDs may be prioritized by immediate need, schedule, or availability of funding.

The entire text of the White Sands Missile Range ROD and the Executive Summary of the EIS can be found on the White Sands Missile Range home page at *http://www.wsmr.army.mil.* To find these documents access the Public Info part of the pager and then click on the Environmental button and choose the desired document.

Dated: November 3, 1998.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA(I,L&E).

[FR Doc. 98–29806 Filed 11–5–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On October 26, 1998, a notice inviting comment from the public was published on page 57108 for the Federal Stafford Loan (Subsidized and Unsubsidized) Program Master Promissory Note. This notice corrects the title from ''Federal Stafford Loan (Subsidized and Unsubsidized) Program Master Promissory Note'' to ''Federal Stafford Loan (Subsidized and Unsubsidized) Program Promissory Note''.

FOR FURTHER INFORMATION CONTACT: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651 or should be electronically mailed to the internet address Pat *Sherrill@ed.gov,* or should be faxed to 202–708–9346.

Dated: November 2, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

[FR Doc. 98–29731 Filed 11–5–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 7, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *Werfeld@al.eop.gov*. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *PatSherrill@ed.gov,* or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 2, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.

Title: Application for Grants Under Bilingual Education: Career Ladder Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 200; *Burden hours:* 24,000.

Abstract: The Department needs and uses this information to make grants. The respondents are local educational agencies, State educational agencies and institutions of higher education and are required to provide this information in applying for grants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98–29730 Filed 11–5–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Nuclear Energy, Science and Technology (NE); Program Announcement LAB NE–99–1 Nuclear Energy Research Initiative

AGENCY: Oakland Operations Office, DOE.

ACTION: Notice of Nuclear Energy Research Initiative Program Announcement LAB NE–99–1.

SUMMARY: The Office of Nuclear Energy, Science and Technology, U.S. Department of Energy, is interested in receiving field work proposals for innovative scientific and engineering research and development in the field of nuclear energy as part of the Nuclear Energy Research Initiative (NERI). NERI is designed to support innovative research that can address the principal technical and scientific obstacles to future use of nuclear power in the U.S. NERI is also intended to reinvigorate the vital nuclear scientific and engineering infrastructure within U.S. universities, industry and DOE national laboratories.

This Program Announcement applies only to field work proposals from DOE National Laboratories that are the sole or lead performer organization of the proposed work. Where the laboratories are included in collaborative arrangements with other nonfederal organizations, but not as the lead performers, the proposals should be submitted in response to a separate Solicitation, DE–PS03–99SF21764, being issued simultaneously with this Program Announcement.

DATES: Potential applicants are encouraged to submit a Notice of Intent to Apply (Attachment A). Refer to the paragraph on the Designation of Field(s) of Proposed Work in this Program Announcement to identify the contemplated field of R&D in Attachment A. The notice should be faxed to Denise Berry, Department of Energy at (510) 637–2025 by November 13, 1998. This Notice of Intent in no way obligates an organization to submit a field work proposal, and failure to submit the Notice of Intent in no way prevents an organization from submitting a field work proposal.

Potential applicants are encouraged to submit a brief preproposal. All preproposals, responding to Program Announcement LAB NE–99–1 should be received by DOE by 4:30 P.M. P.S.T. November 20, 1998. A response encouraging or discouraging a formal field work proposal will be communicated to the applicant by December 11, 1998. Notification of a favorable preproposal is not an indication that an award will be made in response to the field work proposal.

The deadline for receipt of the formal field work proposal is 4:30 P.M. P.S.T. January 29, 1999.

ADDRESSES: All preproposals and field work proposals responding to Program Announcement LAB NE–99–1 should be sent to Denise Berry, U.S. Department of Energy, 1301 Clay Street, 700N, Oakland, California 94612–5208, Attn: Program Announcement LAB NE–99–1.

An original and five copies of the preproposal should be submitted by United States Postal Service including Express Mail or commercial mail delivery service, or should be hand carried by the applicant to the address stated above. Preproposals will not be accepted by fax or electronic mail.

An original and seven copies of the field work proposal should be submitted by United States Postal Service including Express Mail or commercial mail delivery service, or should be hand carried by the applicant to the address stated above. Field work proposals will not be accepted by fax or electronic mail.

SUPPLEMENTARY INFORMATION:

Eligibility

This program announcement invites field work proposals from DOE national laboratories acting as the sole or lead performer organization.

Awards

It is anticipated that awards will be made in Fiscal Year 1999. Field work proposals will be funded yearly, contingent upon the availability of funds. Up to a total of $19 million of Government Fiscal Year 1999 Federal funds are available for awards under this Program Announcement and the complementary grants and cooperative agreements Solicitation (to universities or other institutions of higher learning, industry, non-profit and R&D organizations, and DOE national laboratories that are not participating as the lead organization). Funding for individual research awards is expected to be up to $1 million per year with typical awards in the range of $100,000 to $400,000 per year. Collaborative research projects involving two or more organizations may receive larger awards, if merited. The period of performance for individual projects is expected to be up to 3 years.

DOE reserves the right to fund, in whole or in part, any, all, or none of the field work proposals submitted in response to this Program Announcement.

Background

In January 1997, the President requested his Committee of Advisors on Science and Technology (PCAST) to review the current national energy research and development (R&D) portfolio, and provide a strategy to insure the U.S. has a program to address the Nation's energy and environmental needs for the next century.

In its November 1997 report responding to this request, the PCAST Energy Research and Development Panel determined that assuring a viable nuclear energy option to help meet our future energy needs is important, and that a properly focused R&D effort should be implemented by the Department of Energy to address the principal obstacles to achieving this option. These obstacles include issues involving nuclear waste, proliferation, economics, and safety. The Panel recommended addressing technologies that include, but are not limited to, work on proliferation-resistant reactors or fuel cycles; new reactor designs for improved performance, reduced cost, and enhanced safety to compete in the global market; lower output power reactors for applications where larger reactors may not be advantageous; and nuclear waste. The PCAST report can be viewed on the NERI web page at http://neri.ne.doe.gov.

In response to these recommendations, the Department has proposed the Nuclear Energy Research Initiative (NERI), composed of projects selected from individual or collaborative applications or field work proposals from universities, DOE national laboratories, industry, R&D, and non-profit organizations. To assist in defining the NERI Program, a workshop was convened in Washington, D.C. on April 23–24, 1998, attended by over 120 researchers, scientists, and engineers representing these organizations. The workshop focused primarily on the nuclear R&D topics recommended by PCAST, and served to identify promising areas of R&D to implement these recommendations and related recommendations from the workshop. The workshop results, as reported on the NERI web page, http://neri.ne.doe.gov, have been of fundamental importance in developing the program defined in this Program Announcement. Respondents are encouraged to refer to the NERI Workshop Report prior to developing a field work proposal.

Objective

The NERI program is intended to conduct R&D to meet the following objectives:

- Address and help overcome the principal technical and scientific obstacles to expanded future use of nuclear energy in the U.S., including the issues involving resistance to proliferation, unfavorable economics and nuclear waste disposition;
- Advance the state of nuclear technology to maintain a competitive

position in overseas markets and a future domestic market.

- Promote and maintain a nuclear science and engineering to meet future technical challenges, and
- Improve the performance, efficiency, reliability, economics, and other attributes to enhance nuclear energy applications.

Scope of Work

The Department of Energy is seeking field work proposals for new and innovative science and engineering research, development, concepts, and/or experimental projects in the nuclear energy and supporting fields that will contribute significantly to meeting the NERI program objectives. The following paragraphs identify areas for which field work proposals are solicited. However, researchers may propose projects in other related areas that are consistent with the NERI objectives. In formulating proposed projects, the current state of development in the areas to be investigated should be recognized, such as by citing references, to avoid repeating work already accomplished.

Proliferation Resistant Reactors and Fuel Technology

Increased knowledge is required to enable incorporation of proliferation resistance in the design, development, and deployment of new reactor systems. Proposals are solicited in scientific and engineering research to improve the proliferation resistance of reactors and fuel systems. Possible research areas include, but are not limited to, investigation, and conceptual development to establish feasibility and attributes of reactor systems, fuel systems and/or alternative or modified reactor and fuel cycle concepts; material protection, and control; and techniques that minimize generation of plutonium and waste-by-products, restrict physical access to fuel materials while in the reactor, or increase the energy extraction from and utilization of plutonium and other actinides generated in the fuel.

There is an inherent need for an increase in the understanding of the basic behavior of irradiated materials; for science and engineering research that impacts fuel preparations and recycle or alternate means of spent fuel treatment; and for basic materials research to support understanding of fuel structure changes during irradiation, as it relates to the advancement of proliferation resistant reactors and fuel cycles.

New Reactor Designs

This program element involves scientific and engineering investigation and development, to the extent needed to establish feasibility and attributes, of promising reactor concepts in the following areas:

- Reactors to Achieve Improved Performance/Higher Efficiency and Reduced Costs

Advances in understanding of reactor systems and components are required to achieve a significant improvement in performance and economics for the next generation of reactors. Innovative reactor and power conversion concepts are needed which offer the prospects of higher efficiency, improved performance, design simplification, enhanced safety, and low cost. Increased knowledge is required to support enabling technologies. Research areas of interest include, but are not limited to development of reactor design advancements and alternative reactor core concepts, passive safe systems and components, development of innovative reactor concepts for electrical, non-electrical or co-generation purposes and advanced system or component design concepts, advanced instrumentation and controls, and work to evaluate direct energy conversion technologies such as thermoelectric conversion systems. Proposed projects should address, among other items, the characteristics, principal attributes, feasibility, safety features, proliferation resistance, economic competitiveness, and identification of other research that may be required.

- Low Output Power Reactors

New concepts and supporting knowledge are required to support development of small, possibly compact, and easily deployable reactors either for uses in developing countries or for specialized applications. Potential applications include electrical power generation, process heating, medical isotope production, or nuclear research. Research in science and engineering is expected to focus on concepts, characteristics, principal attributes, feasibility, safety features, proliferation resistance and underlying technologies rather than on full reactor systems design.

Science and engineering research of crucial importance to new reactor designs is dependent on the particular reactor application being explored. Examples include, but are not limited to, basic material degradation and corrosion sciences impacting both operation and applications; increased understanding of the behavior of fluid systems at elevated temperatures; modern high-temperature materials for reactor structural components; innovative non-destructive evaluation methods for system and component monitoring; development and application of risk-based design tools for pre-deployment predictions of performance and reliability; modern computational and modeling methods; incorporation of inherent safety features; automation of reactor system operation; radiation damage and metallurgy of long-lived fuels and other components; science and engineering effort to support alternative energy conversion methods.

Advanced Nuclear Fuels

Research and development is needed to provide measurable improvements in the understanding and performance of nuclear fuel with respect to safety, waste production, proliferation resistance, and economics to enhance the long-term viability of nuclear energy systems. Appropriate topics include, but are not limited to innovative concepts for material preparation and production of nuclear fuels; enhanced fuel design safety; innovation in fuel composition or other attributes that maximize energy production, optimize fissile material utilization, or reduce production costs.

Proposals are solicited in scientific and engineering research that encompass an evaluation over the entire nuclear fuel cycle utilizing knowledge gained over the past several decades on the technical characteristics of recycling systems, as well as in monitoring and controlling fissionable materials, but not being bound by technologies and facilities currently available. This work is basic to innovative reactor concepts, proliferation resistance, and advanced fuels. Results are expected to define gaps in current knowledge and hence identify areas requiring further work.

New Technologies for Management of Nuclear Waste

Paramount to public acceptance of nuclear technology is development of concepts and supporting knowledge required for reliable approaches to management and storage of spent fuels and associated wastes. Appropriate research topics include, but are not limited to, new concepts for on-site or interim surface storage; chemistry and materials science to develop understanding of the behavior of spent fuel for time periods consistent with on-site surface storage requirements; strategies for reduction in high level waste volume; research in surface chemistry and physics to understand and ameliorate corrosion processes at all pertinent interfaces; engineering research to support beneficial use of spent fuel and associated wastes.

Proposals in this area are expected to complement, and not duplicate,

research activities supported by the Offices of Civilian Radioactive Waste and Environmental Management. Abstracts of work supported under the Environmental Management Science Program (EMSP) can be found at *http://www.doe.gov/em52/science-grants.html*, while information on the Civilian Radioactive Waste program and related efforts can be found at *http://www.rw.doe.gov/links.htm*.

Fundamental Science and Technology

This element features research and development in science and new technologies that support one or more applications in the nuclear energy field, including but not limited to those identified for the preceding program elements. The proposed work should be based in part on a consideration of the value or benefits of this work to potential future applications that satisfy the program objectives. Scientific and engineering research is solicited in pertinent areas of materials and chemical sciences, automation engineering and computational sciences, thermodynamics, health physics, systems engineering and safety, human factors research to improve the man/machine interface, and other areas which addresses problems common to the technology topics described above.

Field work proposals should identify the prospective applications associated with the proposed work, and the expected benefits from successful completion of this work.

Designation of Field(s) of Proposed Work

To facilitate the merit review, preproposals and field work proposals should identify the nuclear technology areas and the related engineering research and/or basic science field(s) that most closely apply to the proposed research work. The nuclear technology areas include proliferation resistant reactor and fuel, reactors with higher performance/efficiency, low output reactors, advanced nuclear fuels, and management of nuclear waste, and fundamental science and technology. The engineering research category would include such fields as reactors; system and component design development; fuel systems development; instrumentation and control system development; radioactive waste; and other nuclear engineering fields of research. The basic science categories would include such fields as materials science, chemical science, computational sciences (including development of algorithms and software technology), and engineering sciences (including basic research on instrumentation and control systems, and diagnostic and transport processes).

The requested identification of applicable fields of work is not intended to constrain or otherwise influence the proposed work in any way.

Collaborative Field Work Proposals

Collaboration between science and engineering researchers is encouraged. U.S. universities, DOE national laboratories, private industry and R&D and non-profit organizations are encouraged to submit collaborative field work proposals. Under this Program Announcement, collaborative field work proposals should identify the national laboratory as the lead organization, and should identify the work scope responsibilities and cost for each participating organization. The DOE national laboratory should submit a single field work proposal which integrates the portion of the overall project work scope assigned to each participant.

For successful field work proposals, the DOE laboratory will fund other non-federal participants by a subcontract arrangement. The DOE national laboratory will be funded directly by DOE. The private sector or academic organizations must include a Face Page and Budget Pages for its portion of the project in the field work proposal. Separate Budget Pages must be included for the DOE national laboratory portions. The collaborative field work proposal must be submitted as one package.

Collaboration with international organizations is acceptable provided the collaboration is mutually beneficial and all DOE and other domestic funding is used for work performed in the U.S. Such collaborative arrangements are subject to approval by DOE and must comply with any Federal restrictions on foreign participation, and with any current DOE memoranda of understanding or other general agreements between DOE and the participating foreign entity.

Preproposals

The submittal of preproposals prior to submission of field work proposals is encouraged to receive a preliminary DOE opinion regarding the significance of the proposed work in meeting program objectives. Preproposals should include a cover sheet and a brief (up to 3 pages) project description. The cover sheet should identify the name, telephone, fax and e-mail address for the project manager or principal investigator and for the organization(s) submitting the field work proposal, title of the project, and the field of R&D. A narrative project description should be included indicating the objectives, work to be accomplished and importance of successful completion, resources needed, and estimated cost. In the case of collaborative projects, the applicant should identify the work to be performed by each participating organization and the estimated cost to be borne by each party. The original and five copies of the preproposal should be submitted. DOE will review preproposals for technical and scientific merit and relevance of the proposed project to program objectives and respond to the applicants. This preliminary review neither prevents submittal of a full field work proposal nor indicates the likelihood of an award.

Format and Information To Be Included in the Field Work Proposal

(Reference DOE Order 5700.7C, ''http://www.explorer.doe.gov:1776/htmls/regs/doe/seriestable.html'')

The Field Work Proposal (FWP) is to be prepared and submitted consistent with policies of the investigator's laboratory and the local DOE Operations Office. Additional information is also requested to allow for scientific/technical merit review.

Applicants are expected to use the following format. Field work proposals must be written in English with all budgets in U.S. dollars. The field work proposals should clearly present the objectives, activities or tasks to be performed, schedule and costs, and the importance/significance of the proposed project. Where collaborative efforts are proposed, the individual responsibilities of participating organizations should be identified. As a minimum, the following information should be included:

- Field work proposal.
- Table of Contents.
- Project Abstract including identification of the field(s) of R&D for the proposed project (1 page).
- Project Description—narrative description of the proposed project including objectives, R&D plan including preliminary studies, research design and tasks, and the significance or benefits of the proposed project (no more than 20 pages; multi-investigator collaborative projects may use up to 40 pages).
- Project Schedule information.
- Organization & Qualifications—identification of the project organization, and qualifications and responsibilities of the participating organizations. Biographical sketches of project manager/principal investigator and other key project personnel (no more than 2 pages each).

• Collaborative R&D (if applicable)—description of the collaborative arrangements defining responsibilities and tasks assigned to each participating organization (up to 2 pages).

• Facilities & Resources—information on the experience of the applicant's organization and the adequacy of required facilities and resources (no more than 5 pages).

• Budget for each year and a summary budget page for the entire project period.

• Budget explanation for each participating organization.

• Budget and budget justification for each collaborative subproject, if any.

• Additional information the applicant deems relevant may be included, subject to the page limitation.

In addition to providing an original and seven copies of each proposal, applicants are required to also provide a 3.5-inch write protected diskette containing the field work proposal in electronic format. The label on the diskette must clearly identify the institution, principal investigator, title of field work proposal, and the computer system and program used to prepare the document. Unsuccessful field work proposals will not be returned to the applicant.

Field Work Proposal Evaluation

All valid field work proposals will be evaluated in accordance with the requirements of Title 10, Code of Federal Regulations, Part 600.13.

• DOE will perform an initial review for conformance with the technical and administrative requirements stated in this Program Announcement, for funding availability, and for general relevance to NERI program objectives.

• For those field work proposals that successfully complete the initial review, an objective merit review (peer review) will be performed to evaluate technical and/or scientific merit, and cost aspects of the field work proposals, exclusive of NE programmatic and policy factors. This review will be in accordance with the evaluation criteria stated below. For this purpose, a group comprised of three or more professionally and technically qualified persons will be selected in such a manner as to assure the highest degree of independence and objectivity. The reviewers may include any mix of federal and non-federal experts, except those persons involved in approving/disapproving the field work proposals. Reviewers must comply with the requirements for avoiding conflict of interest as stated in 10 CFR 600.14.

• Following the objective merit review, a relevance review will be performed by DOE on those field work proposals judged to be of the highest merit. The field work proposals will be evaluated with respect to NE programmatic and policy factors, including relevance of the proposed work to the NERI program objectives, and the balance among program elements to be supported.

The following evaluation criteria apply to the objective merit review:

• Technical quality of the field work proposal:

—Contribution to the state of knowledge in the scientific/technology fields;

—Importance of the proposed work in meeting program objectives;

—Completeness and clarity of the technical proposal;

—Appropriateness/adequacy of the proposed methodology or approach;

• Extent to which proposed work is new, unique or innovative;

• Reasonableness of project cost and schedule, including allocations among multiple participating organizations where applicable.

• Capabilities and qualifications of principal investigator/project manager and key personnel, adequacy of resources and facilities applied by participating organizations.

Intellectual Property Rights

With respect to intellectual property, the patent and data provisions set forth in the national laboratories M&O contract shall be used.

Statutory and Regulatory Authority

The Nuclear Energy Research Initiative will be conducted under the authority of the Energy and Water Development Appropriations Act of 1999, Public Law 105–245; the Catalog of Federal Domestic Assistance (CFDA) number 81.092; and the applicable DOE Financial Assistance Regulations at 10 CFR Part 600. The regulations and guidance documents can be accessed on the DOE Financial Assistance Home Page at ''http://www.pr.doe.gov/fahome.html''.

Program Announcement Questions & Answers

DOE does not intend to hold a preproposal conference. You may submit your written questions via e-mail to denise.berry@oak.doe.gov by November 13, 1998. Responses to questions will be placed on the Oakland Operations Office Website at ''http://www.oak.doe.gov/financial/sol__page.html''.

Information

Information about the development, submission of field work proposals, eligibility, limitations, the selection process, and other policies and procedures may be found on ''http://www.oak.doe.gov/financial/sol__page.html''.

FOR FURTHER INFORMATION CONTACT: Denise Berry, Contract Specialist, U.S. Department of Energy, 1301 Clay Street, 700N, Oakland, California 94612–5208 (510) 637–1873, (510) 637–2025 FAX.

Issued in Oakland, California, on October 29, 1998.

Joan Macrusky,

Director, Financial Assistance Center.

Attachment A

FAX: (510) 637–2025
TO: Denise Berry, Contract Specialist

Notice of Intent To Apply

_____

Name of DOE Laboratory

_____

Name of Collaborating Organization(s) intends to submit a field work proposal under Program Notice No. LAB NE–99–1.

Title: _____

Scope of Work Element/Area: _____

Engineering research and/or basic science field: _____

[FR Doc. 98–29800 Filed 11–5–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Nuclear Energy, Science and Technology (NE)

Financial Assistance Solicitation No. DE–PS03–99SF21764; Nuclear Energy Research Initiative

AGENCY: Oakland Operations Office, DOE.

ACTION: Notice of Solicitation inviting Grant and Cooperative Agreement applications.

SUMMARY: The Office of Nuclear Energy, Science and Technology, U.S. Department of Energy, is interested in receiving applications for financial assistance through the award of grants and cooperative agreements, as appropriate, for innovative scientific and engineering research and development in the field of nuclear energy as part of the Nuclear Energy Research Initiative (NERI). NERI is designed to support innovative research that can address the principal technical and scientific obstacles to future use of nuclear power in the U.S. NERI is also intended to reinvigorate the vital nuclear scientific and engineering infrastructure within U.S. universities, industry and DOE national laboratories.

This Solicitation applies to applications from universities or other institutions of higher learning, industry, non-profit and R&D organizations and collaborations among organizations, including those in which DOE national laboratories are participating, but not as the lead organization. A separate Program Announcement is being issued simultaneously for applications in which a DOE national laboratory is the sole or lead performing organization.

DATES: Potential applicants are encouraged to submit a Notice of Intent to Apply (Attachment A). Refer to the paragraph on the Designation of Field(s) of Proposed Work in this solicitation to identify the contemplated field of R&D in Attachment A. The notice should be faxed to Denise Berry, Department of Energy at (510) 637–2025 by November 13, 1998. This Notice of Intent in no way obligates an organization to submit an application, and failure to submit the Notice of Intent in no way prevents you from submitting an application.

Potential applicants are encouraged to submit a brief preapplication. All preapplications, responding to Solicitation No. DE–PS03–99SF21764, should be received by DOE by 4:30 p.m. P.S.T., November 20, 1998. A response encouraging or discouraging a formal application will be communicated to the applicant by December 11, 1998. Notification of a favorable preapplication is not an indication that an award will be made in response to the formal application.

The deadline for receipt of the formal applications is 4:30 p.m. P.S.T., January 29, 1999.

ADDRESSES: All preapplications and applications referencing Solicitation No. DE–PS03–99SF21764, should be sent to Denise Berry, U.S. Department of Energy, 1301 Clay Street, 700N, Oakland, California 94612–5208, Attn: Solicitation No. DE–PS03–99SF21764.

An original and five copies of the preapplication should be submitted by United States Postal Service including Express Mail or commercial mail delivery service, or should be hand carried by the applicant to the address stated above. Preapplications will not be accepted by fax, or electronic mail.

An original and seven copies of the application shall be submitted by United States Postal Service including Express Mail or commercial mail delivery service, or should be hand carried by the applicant to the address stated above. Applications will not be accepted by fax, or electronic mail.

SUPPLEMENTARY INFORMATION:

Eligibility

This solicitation invites applications from all segments of the U.S. private sector (non-federal). U.S. universities or other institutions of higher learning, industry, non-profit and R&D organizations are eligible for grant or cooperative agreement awards under this program. DOE national laboratories are eligible to participate, but not as the lead organization in the application. A separate Program Announcement is being issued for proposals in which a DOE national laboratory is the sole or lead performing organization. Non-citizens employed by U.S. institutions also are eligible.

Awards

It is anticipated that awards will be made in Fiscal Year 1999. One-year or multiple year funding of grants and cooperative agreements are anticipated, contingent upon the availability of funds. Up to a total of $19 million of Government Fiscal Year 1999 Federal funds are available for awards under this Solicitation and the complementary Program Announcement (to DOE national laboratories).

Funding for individual research awards is expected to be up to $1 million per year with typical awards in the range of $100,000 to $400,000 per year. Collaborative research projects involving two or more organizations may receive larger awards, if merited. The period of performance for individual projects is expected to be up to 3 years.

DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this solicitation.

Background

In January 1997, the President requested his Committee of Advisors on Science and Technology (PCAST) to review the current national energy research and development (R&D) portfolio, and provide a strategy to insure the U.S. has a program to address the Nation's energy and environmental needs for the next century.

In its November 1997 report responding to this request, the PCAST Energy Research and Development Panel determined that assuring a viable nuclear energy option to help meet our future energy needs is important; and that a properly focused R&D effort should be implemented by the Department of Energy to address the principal obstacles to achieving this option. These obstacles include issues involving nuclear waste, proliferation, economics, and safety. The Panel recommended addressing technologies that include, but are not limited to, work on proliferation-resistant reactors or fuel cycles; new reactor designs for improved performance, reduced cost, and enhanced safety to compete in the global market; lower output power reactors for applications where larger reactors may not be advantageous; and nuclear waste. The PCAST report can be viewed on the NERI web page at http://neri.ne.doe.gov.

In response to these recommendations, the Department has proposed the Nuclear Energy Research Initiative (NERI), composed of projects selected from individual or collaborative applications from universities, DOE national laboratories, industry, R&D, and non-profit organizations. To assist in defining the NERI program, a workshop was convened in Washington, D.C. on April 23–24, 1998, attended by over 120 researchers, scientists, and engineers representing these organizations. The workshop focused primarily on the nuclear R&D topics recommended by PCAST, and served to identify promising areas of R&D to implement these recommendations and related recommendations from the workshop. The workshop results, as reported on the NERI web page, http://neri.ne.doe.gov, have been of fundamental importance in developing the program defined in this solicitation. Respondents are encouraged to refer to the NERI Workshop Report prior to developing an application.

Objective

The NERI program is intended to conduct R&D to meet the following objectives:

- Address and help overcome the principal technical and scientific obstacles to expanded future use of nuclear energy in the U.S., including the issues involving resistance to proliferation, unfavorable economics and nuclear waste disposition;
- Advance the state of nuclear technology to maintain a competitive position in overseas markets and a future domestic market;
- Promote and maintain a nuclear science and engineering infrastructure to meet future technical challenges, and
- Improve the performance, efficiency, reliability, economics, and other attributes to enhance nuclear energy applications.

Scope of Work

The Department of Energy is seeking applications for new and innovative science and engineering research, development, concepts, and/or

experimental projects in the nuclear energy and supporting fields that will contribute significantly to meeting the NERI program objectives. The following paragraphs identify areas for which proposals are solicited. However, researchers may propose projects in other related areas that are consistent with the NERI objectives. In formulating proposed projects, the current state of development in the areas to be investigated should be recognized such as by citing references, to avoid repeating work already accomplished.

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Increased knowledge is required to enable incorporation of proliferation resistance in the design, development, and deployment of new reactor systems. Proposals are solicited in scientific and engineering research to improve the proliferation resistance of reactors and fuel systems. Possible research areas include, but are not limited to, investigation and conceptual development to establish feasibility and attributes of reactor systems, fuel systems and/or alternative or modified reactor and fuel cycle concepts; material protection, and control; and techniques that minimize generation of plutonium and waste-by-products, restrict physical access to fuel materials while in the reactor, or increase the energy extraction from and utilization of plutonium and other actinides generated in the fuel.

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Applications should identify the prospective technical areas associated with the proposed work, and the expected benefits from successful completion of this work.

Designation of Field(s) of Proposed Work

To facilitate the merit review, preapplications and applications should identify the nuclear technology areas and the related engineering research and/or basic science field(s) that most closely apply to the proposed research work. The nuclear technology areas include proliferation resistant reactor and fuel, reactors with higher performance/efficiency, low output reactors, advanced nuclear fuels, management of nuclear waste, and fundamental science and technology. The engineering research category would include such fields as reactors; system and component design development; fuel systems development; instrumentation and control systems development; radioactive waste; and other nuclear engineering fields of research. The basic science categories would include such fields as materials science, chemical science, computational sciences (including development of algorithms and software technology), and engineering sciences (including basic research on instrumentation and control systems, diagnostics and transport processes).

The requested identification of applicable fields of work is not intended to constrain or otherwise influence the proposed work in any way.

Collaborative Applications

Collaboration between science and engineering researchers is encouraged. U.S. universities, DOE national laboratories, private industry and R&D and non-profit organizations are encouraged to submit collaborative applications. Collaborative applications should identify a lead organization, and the work scope responsibilities and cost for each participating organization. The lead organization should submit a single application, which integrates the portion of the overall project work scope assigned to each participant.

For successful applications, DOE will award grants or cooperative agreements, as applicable, to the lead organizations. The lead organization will fund other non-federal participants by a subcontract arrangement. Any participating DOE national laboratories will be separately funded directly by DOE. The private sector or academic organization must include a Standard Face Page (Form 424) and Budget Pages for its portion of the project in the application. Separate Budget Pages must be included for the DOE national laboratory portion. The joint application must be submitted as one package.

Where a DOE national laboratory is the lead organization, the application should be prepared in response to Program Announcement LAB NE–99–1.

Collaboration with international organizations is acceptable provided the collaboration is mutually beneficial and the lead organization is a U.S. based organization, and all DOE and other domestic funding is used for work performed in the U.S. Such collaborative arrangements are subject to approval by DOE and must comply with any Federal restrictions on foreign participation, and with any current DOE memoranda of understanding or other general agreements between DOE and the participating foreign entity.

Preapplications

The submittal of preapplications prior to submission of full applications is encouraged. The purpose of submitting a preapplication is to receive a preliminary DOE opinion regarding the significance of the proposed work in meeting program objectives. Preapplications should include a cover sheet and a brief (up to 3 pages) project description. The cover sheet should identify the name, telephone, fax and e-mail address for the project manager or principal investigator and for the organization(s) submitting the application, title of the project, and the field of R&D. A narrative project description should be included indicating the objectives, work to be accomplished and importance of successful completion, resources needed, and estimated cost. In the case of collaborative projects, the preapplicant should identify the work to be performed by each participating organization and the estimated cost to be borne by each party. The original and five copies of the preapplication should be submitted. DOE will review preapplications for technical and scientific merit and relevance of the proposed project to program objectives and respond to the applicants. This preliminary review neither prevents submittal of a full application nor indicates the likelihood of an award.

Format and Information to be Included in the Application

Applicants are expected to use the following format. Applications must be written in English with all budgets in U.S. dollars. The applications should clearly present the objectives, activities or tasks to be performed, schedule and costs, and the importance/significance of the proposed project. Where collaborative efforts are proposed, the individual responsibilities of participating organizations should be identified. As a minimum, the following information should be included:

- Standard face page (DOE Form 424).
- Table of Contents.
- Project Abstract including identification of the fields of R&D for the proposed project (1 +page).
- Project Description—narrative description of the proposed project including objectives, R&D plan including preliminary studies, research design and tasks, and the significance or benefits of proposed project (no more than 20 pages; multi-investigator collaborative projects may use up to 40 pages).
- Project schedule information.
- Organization & Qualifications—identification of the project organization, and qualifications and responsibilities of the participating organizations. Biographical sketches of project manager/principal investigator and other key project personnel (no more than 2 pages each).
- Collaborative R&D (if applicable)—description of the collaborative arrangements defining responsibilities and tasks assigned to each participating organization (up to 2 pages).
- Facilities & Resources—information on the experience of the applicant organization and the adequacy of required facilities and resources (no more than 5 pages).
- Budget for each year and a summary budget page for the entire project period (using DOE F.4620.1)
- Budget explanation for each participating organization.

• Budget and budget justification for each collaborative subproject, if any.

• Additional information the applicant deems relevant may be included, subject to the page limitation.

In addition to providing an original and seven copies of each application, applicants are required to also provide a 3.5-inch write protected diskette containing the application in electronic format. The label on the diskette must clearly identify the institution, principal investigator, title of application, and the computer system and program used to prepare the document. Unsuccessful applications will not be returned to the applicant.

Application Evaluation

All valid applications will be evaluated in accordance with the requirements of Title 10 Code of Federal Regulations, Part 600.13:

• DOE will perform an initial review for conformance with the technical and administrative requirements stated in this solicitation, for funding availability, and for general relevance to NERI program objectives.

• For those applications that successfully complete the initial review, an objective merit review (peer review) will be performed to evaluate technical and/or scientific merit, and cost aspects of the applications, exclusive of NE programmatic and policy factors. This review will be in accordance with the evaluation criteria stated below. For this purpose, a group comprised of three or more professionally and technically qualified persons will be selected in such a manner as to assure the highest degree of independence and objectivity. The reviewers may include any mix of federal and non-federal experts, except those persons involved in approving/disapproving the applications. Reviewers must comply with the requirements for avoiding conflict of interest as stated in 10 CFR 600.14.

• Following the objective merit review, a relevance review will be performed by DOE on those applications judged to be of the highest merit. The applications will be evaluated with respect to NE programmatic and policy factors, including relevance of the proposed work to the NERI program objectives, and the balance among program elements to be supported.

The following evaluation criteria apply to the objective merit review:

• Technical quality of the application and proposed work:

—Contribution to the state of knowledge in the scientific/technology fields;

—Importance of the proposed work in meeting program objectives;

—Completeness and clarity of the technical application;

—Appropriateness/adequacy of the proposed methodology or approach;

• Extent to which proposed work is new, unique or innovative;

• Reasonableness of the proposed project cost and schedule including allocations among multiple participating organizations where applicable.

• Capabilities and qualifications of principal investigator/project manager and key personnel; adequacy of resources and facilities applied by participating organizations.

Intellectual Property Rights

With respect to intellectual property, the patent and data provisions set forth in 10 CFR Part 600.27 and 48 CFR 927 shall be used in any financial assistance awards funded under this program. Any application or preapplication materials which contain proprietary technical or confidential commercial data should be submitted with the Notice contained at 10 CFR 600.15 (b)(1).

Regulatory Information

No funding will be available under the DOE Minority Economic Impact Act (MEI) loan program, 10 CFR Part 800, to finance the cost of preparing a financial assistance application.

Review under E.O. 12372, ''Intergovernmental Review of Federal Programs'' is not required.

Statutory and Regulatory Authority

The Nuclear Energy Research Initiative will be conducted under the authority of the Energy and Water Development Appropriations Act of 1999, Pub. L. 105–245; the Catalog of Federal Domestic Assistance (CFDA) number 81.092; and the applicable DOE Financial Assistance Regulations at 10 CFR Part 600. The regulations and guidance documents can be accessed on the DOE Financial Assistance Home Page at: ''http://www.pr.doe.gov/fahome.html''.

Solicitation Questions & Answers

DOE does not intend to hold a preapplication conference. You may submit your written questions via e-mail to denise.berry@oak.doe.gov by November 13, 1998. Responses to questions will be periodically placed on the Oakland Operations Web Site: ''http://www.oak.doe.gov/financial/sol__page.html''.

Information

Information about the development, submission of applications, eligibility, limitations, the selection process, and other policies and procedures may be found on ''http://www.oak.doe.gov/financial/sol__page.html''2.

Certifications

Lobbying Restrictions (Department of Interior & Related Agencies Appropriations Act, 1998)

The contractor or awardee agrees that none of the funds obligated on the award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

Notice Regarding the Purchase of American-Made Equipment and Products—Sense of Congress

It is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

Simpson-Craig Amendment

Applicant organizations which are described in section 501(c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995 shall not be eligible for the receipt of Federal funds constituting an award, grant, or loan. Section 501(c)(4) of the Internal Revenue Code of 1986 covers:

> Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

As set forth in section 3 of the Lobbying Disclosure Act of 1995, as amended, (2 U.S.C. 1602), lobbying activities are defined broadly to include among other things, contacts on behalf of an organization with specified employees of the Executive Branch and Congress with regard to Federal legislative regulatory, and program administrative matters. Applicants qualifying as described in section 501(c)(4) of the Internal Revenue Code of 1986 must fill out representation.

FOR FURTHER INFORMATION CONTACT: Denise Berry, Contract Specialist, U.S. Department of Energy, 1301 Clay Street, 700N, Oakland, California 94612–5208, (510) 637–1873, Fax (510) 637–2025.

Issued in Oakland, California on October 29, 1998.

Joan Macrusky,

Director, Financial Assistance Center.

Attachment A

FAX: (510) 637–2025

To: Denise Berry, Contract Specialist

NOTICE OF INTENT TO APPLY

Name of Organization/Principal Investigator

Name of Collaborating Organization(s) intends to submit an application under Solicitation No. DE–PS03–99SF21764.
Title: _____

Scope of Work Element/Area: _____

Engineering research and/or basic science field:

[FR Doc. 98–29801 Filed 11–5–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–39–000]

Granite State Gas Transmission, Inc.; Notice of Application

November 2, 1998.

Take notice that on October 27, 1998, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581, filed an application, pursuant to Sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations. Granite State seeks to acquire and operate as an integral component of its main transmission system approximately 5,300 feet of 8 and 12-inch lateral pipeline now owned and operated by Northern Utilities, Inc. (Northern Utilities). The pipe is currently part of Northern Utilities natural gas distribution system in the Town of Newington (Rockingham County), New Hampshire. As a consequence of the acquisition, Granite State needs to abandon a transportation service delivery point to Northern Utilities on its main line and establish three new delivery points to Northern Utilities along the lateral. The details of Granite State's proposal are more fully set forth in the application which is on file with the Commission and open to public inspection.

Granite State says that the Commission has certificated a new interstate pipeline in Docket No. CP97–238–000 which will be jointly owned and operated by the Portland Natural Gas Transmission System (PNGTS) and Maritimes and Northeast Pipeline L.L.C. (Maritimes). According to Granite State, PNGTS-Maritimes have been authorized to construct and operate an interconnection with Granite State in the Town of Newington at which point Granite State will receive natural gas deliveries from the jointly owned pipeline. Granite State will receive such deliveries for further transportation on its system, most notably on behalf of, Northern Utilities. Granite State further says that Northern Utilities will be a significant shipper on PNGTS–Maritimes, but will not be directly connected to the jointly owned pipeline facility. Granite State says that the only route by which Northern Utilities can receive gas shipped for its account on PNGTS-Maritimes is via Granite State's authorized interconnections with the jointly owned pipeline.

Granite State further says that it has no existing directly connecting pipeline between the planned and authorized Newington interconnection with PNGTS–Maritimes. However, Granite State says that Northern Utilities has a distribution lateral consisting of 5,324 feet of 8 and 12-inch pipeline (the Gosling Road Lateral) which extends from Granite State's main line to the site of the Newington interconnection. Granite State proposes in its application to acquire and operate the lateral as an integral component of its main transmission system. The acquisition cost will be the depreciated book cost on the date of transfer, which is estimated to be $372,035.12 on December 31, 1998.

Granite State also says that, in connection with the acquisition, it will abandon the present delivery point to Northern Utilities at the point where the Gosling Road Lateral connects with Granite State's main line and it will establish three delivery points to Northern Utilities at existing points on the lateral where gas now flows into Northern Utilities' local distribution system. Granite State says that no construction of new facilities is required to implement its proposed acquisition and no existing service will be terminated or abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 23, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed acquisition are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Granite State to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–29764 Filed 11–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2777]

Idaho Power Company; Notice of Authorization for Continued Project Operation

November 2, 1998.

On December 20, 1995, Idaho Power Company, licensee for the Upper Salmon Falls Project No. 2777, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2777 is located on the Snake River in Gooding and Twin Falls Counties, Idaho.

The license for Project No. 2777 was issued for a period ending October 31, 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 CFR 16.21(a); if the licensee of such project has filed an application of 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 the 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. 2777 is issued to Idaho Power Company for a period effective November 1, 1998, through October 31, 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 October 31, 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 Idaho Power Company is authorized to continue operation of the Upper Salmon Falls Project No. 2777 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 98–29766 Filed 11–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2169, TN]

Tapoco, Inc.; Notice of Tapoco, Inc's Request To Use Alternative Procedures in Preparing a License Application

November 2, 1998.

This notice supersedes the NOTICE OF TAPOCO, INC'S REQUEST TO USE ALTERNATIVE PROCEDURES IN PREPARING A LICENSE APPLICATION, dated October 28, 1998.

On October 1, 1998, the existing licensee, Tapoco, Inc. (Tapoco), filed a request to use alternative procedures for submitting an application for new license for the existing Tapoco Project No. 2169.[1] Tapoco has demonstrated that they have made an effort to contact resource agencies, Indian tribes, nongovernmental organization (NGOs), and others affected by their proposal, and that a consensus exists that the use of an alternative procedure is appropriate in this case.

The purpose of this notice is to invite comments on Tapoco request to use the alternative procedure, pursuant to Section 4.34(i) of the Commission's regulations.[2] Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedures being requested here combine the prefiling consultation process with the environmental review process, allowing the applicant to complete and file an environmental document (NEPA document) in lieu of Exhibit E of the license application. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

[1] The 326.5-megawatt Tapoco (originally known as the Tallasee project) project is located on the Little Tennessee and its tributary, the Cheoah River, in Blount and Monroe Counties, Tennessee, and Graham and Swain Counties, North Carolina. The project consists of four development; Chilhowee, Cheoah, Santeetlah, and Calderwood.

[2] Order No. 596, Regulations for the Licensing of Hydroelectric Projects, 81 FERC ¶ 61,103 (1997).

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on Tapoco's proposal to use the alternative procedures to prepare an application to relicense the Tapoco Project.

Filing Requirements

The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comment filings must bear the heading ''Comments on the Alternative Procedure,'' and include the project name and number (Tapoco Project, No. 2169).

For further information, please contact Ronald McKitrick of the Federal Energy Regulatory Commission at 770–452–2363 ext. 44 or E-mail at ronald.mckitrick@FERC.Fed.US.

David P. Boergers,

Secretary.

[FR Doc. 98–29765 Filed 11–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–28–000]

Tennessee Gas Pipeline Company; Notice of Application for Section 3 Authorization and Request for a Presidential Permit

November 2, 1998.

Take notice that on October 20, 1998, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application pursuant to Section 3 of the Natural Gas Act (NGA), and Subpart B of Part 153 of the Federal Energy Regulatory Commission's (Commission) Regulations under the NGA, for an order authorizing the siting, construction, and operation of pipeline facilities and the place of entry and exit for import and export of natural gas at the International Boundary between the United States and Mexico in Hidalgo County, Texas.

Additionally, Tennessee requests, pursuant to Subpart C of Part 153 of the Commission's Regulations under the NGA and in compliance with Executive Order 10485, as amended by Executive Order 12038, issuance of a Presidential Permit for the construction, operation, maintenance, and connection of

pipeline facilities for the import and export of natural gas at the International Boundary between the United States and Mexico in Hidalgo County, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Pemex Gas y Petroquímica Básica (PGPB) has requested that Tennessee provide transportation service for PGPB to an interconnect with PGPB's existing meter station in Reynosa, Mexico.[1] In order for Tennessee to provide the requested transportation service for PGPB, Tennessee will construct new facilities consisting of (1) approximately 9.3 miles of 24-inch diameter lateral pipeline commencing from Side Valve No. 409A–401 of Tennessee's existing Donna Lateral line 409A–100 located at Mile Post 9.02 located in Hidalgo County, Texas, (2) a meter station, and (3) approximately 1,500 feet of 24-inch diameter pipe (Border Crossing Facilities) ending at an interconnect with an existing PGPB meter station located in Reynosa, Mexico. These facilities are the subject of a prior notice filing in Docket No. CP99–29–000.

In order to provide for the importation and exportation of natural gas at the International Boundary between the United States and Mexico in Reynosa, Mexico, Tennessee proposes to construct the Border Crossing Facilities. Of this approximately 1,500 foot pipeline segment, Tennessee will construct approximately 486 feet of 24-inch diameter pipe from the terminus of the 9.3 mile lateral to a point which represents the midpoint of the Rio Grande/Rio Bravo River at the International Boundary. From the Mexican side of the midpoint of the Rio Grande/Rio Bravo River, Tennessee will cause the construction on PGPB's behalf of approximately 951 feet of 24-inch diameter pipeline, with appurtenances, which shall extend to PGPB's meter station. Tennessee will own, operate and maintain the Border Crossing Facilities on the U.S. side of the International Boundary. PGPB will own, operate and maintain the facilities extending from the Mexican side of the International Boundary to its meter station.

Tennessee and PGPB have entered into a Transportation Service Agreement (TSA) dated September 30, 1998, which provides for the firm transportation of up to 185,000 dekatherms per day of natural gas by Tennessee for PGPB between specified points of interconnection on Tennessee's mainline facilities and the proposed interconnection point.

Any person desiring to be heard or to make any protest with reference to said document should, on or before, November 23, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 a protest or motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) 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 Commission by Section 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 document if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the motion 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 Tennessee to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–29761 Filed 11–5–98; 8:45 am]

BILLING CODE 6717–01–M

[1] PGPB is a wholly-owned subsidiary of Petroleos Mexicanos, the Mexican national oil company. PGPB operates Mexico's interstate natural gas pipeline network and is responsible for Mexican and international natural gas, LNG and crude oil marketing.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–29–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

November 2, 1998.

Take notice that on October 20, 1998, Tennessee Gas Pipeline Company (Tennessee), a Delaware Corporation, P.O. Box 2511, Houston, Texas 77252, tendered filing a request in Docket No. CP99–29–000, pursuant to Sections 157.205, 157.208 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 18 CFR 157.208, and 18 CFR 157.212), for authorization to construct and operate a meter, a lateral and a bi-directional point to provide transportation service to Pemex Gas y Petroquímica Básica (PGPB), under Tennessee's blanket certificate authority granted September 1, 1982, in Docket No. CP82–413–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request on file with the Commission and open for public inspection.

Tennessee proposes to construct and operate an approximately 9.3 mile 24-inch outside diameter lateral with a proposed MAOP of 1000 psi extending from Side Valve No. 409A–401 of Tennessee's Donna Lateral Line at Mile Post 9.02 in Hidalgo County, Texas, to the proposed Border Crossing Facilities that are the subject of a Section 3 and Presidential Permit application that Tennessee filed contemporaneously in Docket No. CP99–28–000. In addition, Tennessee will install a bi-directional 12-inch ultrasonic meter at the Donna Lateral take-off (the intersection of the Donna Lateral and the 9.3-mile lateral). Further, Tennessee proposes to construct approximately 1500 feet of 24-inch pipe which constitutes the aforementioned Border Crossing Facilities. Of the total amount of the Border Crossing Facilities, 486 feet will be on the U.S. side of the International Boundary. The remaining amount, approximately 951 feet will be constructed from the International Boundary to a PGPB meter station in Reynosa, Mexico. PGPB will own, operate, and maintain the Border Crossing Facilities in Mexico. The total estimated cost of Tennessee's facilities, including the 486 feet of Border Crossing Facilities in the U.S., is $9.35 million.

Tennessee will use the meter as the back-up for custody transfer measurements at PGPB's meter station in Reynosa, Mexico. The proposed bi-directional point will be designated as the midpoint of the Rio Grande/Rio Bravo River at the International Boundary. Tennessee proposes to operate this point as a delivery point on its system and make it available for use by its customers on a firm and interruptible basis. In addition, Tennessee proposes to operate this point as a receipt point pursuant to the automatic authorization provisions of 18 CFR 157.208.

Tennessee states that (i) the total quantities to be received and/or delivered at the delivery point after it is installed will not exceed previously authorized total quantities; (ii) that the proposed modification is not prohibited by its tariff; and (iii) that it has sufficient capacity to accomplish receipt and/or deliveries at the proposed point without detriment or disadvantage to Tennessee's other customers.

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 385.234), a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a request. 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,

Secretary.

[FR Doc. 98–29762 Filed 11–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–34–000]

Williams Gas Pipelines Central, Inc.; Notice of Request Under Blanket Authorization

November 2, 1998.

Take notice that on October 23, 1998, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP99–34–000 a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization (1) to replace the Missouri Gas Energy (MGE), a division of Southern Union Company, Anderson town border meter setting and appurtenant facilities and relocate it to the site of the existing high pressure regulator, and (2) to abandon in place by sale to MGE approximately 1.05 miles of the Anderson 3-inch lateral pipeline (Line HR–2) located in McDonald County, Missouri, under Williams's blanket authorization issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

The project cost according to Williams is estimated at $12,957. Williams states that the change is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantages to other customers. The proposed changes will not have an effect on Williams' peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time 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,

Secretary.

[FR Doc. 98–29763 Filed 11–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3169–001, et al.]

Consolidated Edison Company of New York, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 27, 1998.

Take notice that the following filings have been made with the Commission:

1. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–3169–001]

Take notice that on October 22, 1998, Consolidated Edison Company of New York, Inc., made its compliance filing as required under the Commission's order of September 22, 1998.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. American Power Exchange, Inc., Power Providers Inc., Energy Resource Management Corporation, TexPar Energy, Inc., Vitol Gas & Electric LLC, The Cleveland Electric Illuminating Company, The Toledo Edison Company

[Docket No. ER94–1578–016, Docket No. ER96–2303–009, Docket No. ER96–358–009, Docket No. ER95–62–015, Docket No. ER94–155–023, Docket No. ER99–264–000, Docket No. ER99–265–000]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 19, 1998, American Power Exchange, Inc. filed certain information as required by the Commission's October 19, 1994 order in Docket No. ER94–1578–000.

On October 20, 1998, Power Providers Inc. filed certain information as required by the Commission's September 3, 1996 order in Docket No. ER96–2303–000.

On October 20, 1998, Energy Resource Management Corporation filed certain information as required by the Commission's December 20, 1995 order in Docket No. ER96–358–000.

On October 20, 1998, TexPar Energy, Inc. filed certain information as required by the Commission's December 27, 1994 order in Docket No. ER95–62–000.

On October 20, 1998, Vitol Gas & Electric LLC filed certain information as required by the Commission's January 14, 1994 order in Docket No. ER94–155–000.

On October 20, 1998, the Cleveland Electric Illuminating Company filed certain information as required by the Commission's September 27, 1996 order in Docket No. ER96–371–000.

On October 20, 1998, the Toledo Edison Company filed certain information as required by the Commission's January 10, 1997 order in Docket No. ER97–455–000.

3. Starghill Alternative Energy Corporation, Astra Power, LLC, Energy Clearinghouse Corporation, Howell Power Systems, Inc., WPS Power Development, Inc., Questar Energy Trading Company, Current Energy, Inc., Equinox Energy, LLC, Nicole Energy Services, Yadkin, Inc., South Jersey Energy Company, HQ Energy Services (U.S.) Inc., Kincaid Generation LLC, WPS Energy Services, Inc., Old Dominion Electric Cooperative, Watt Works, LLC., Texas-New Mexico Power Company, Delmarva Power & Light Company

[Docket No. ER97–4680–003, Docket No. ER98–3378–001, Docket No. ER98–2020–001, Docket No. ER94–178–016, Docket No. ER96–1088–020, Docket No. ER96–404–012, Docket No. ER98–102–003, Docket No. ER98–1486–002, Docket No. ER98–2683–001, Docket No. ER99–247–000, Docket No. ER97–1397–003, Docket No. ER97–851–006, Docket No. ER97–30–003, Docket No. ER96–1088–019, Docket No. ER97–4314–005, Docket No. ER97–2592–006, Docket No. ER99–285–000, Docket No. ER99–235–000]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 19, 1998, Starghill Alternative Energy Corporation filed certain information as required by the Commission's November 24, 1997 order in Docket No. ER97–4680–000.

On October 19, 1998, Astra Power, LLC filed certain information as required by the Commission's July 14, 1995 order in Docket No. ER98–3378–000.

On October 19, 1998, Energy Clearinghouse Corporation filed certain information as required by the Commission's June 1, 1998 order in Docket No. ER98–2020–000.

On October 19, 1998, Howell Power Systems, Inc. filed certain information as required by the Commission's January 14, 1994 order in Docket No. ER94–178–000.

On October 19, 1998, WPS Power Development, Inc. filed certain information as required by the Commission's April 16, 1996 order in Docket No. ER96–1088–000.

On October 19, 1998, Questar Energy Trading Company filed certain information as required by the Commission's January 29, 1996 order in Docket No. ER96–404–000.

On October 19, 1998, Current Energy, Inc. filed certain information as required by the Commission's December 4, 1997 order in Docket No. ER98–102–000.

On October 19, 1998, Equinox Energy, LLC filed certain information as required by the Commission's March 2, 1998 order in Docket No. ER98–1486–000.

On October 19, 1998, Nicole Energy Services filed certain information as required by the Commission's June 12, 1998 order in Docket No. ER98–2683–000.

On October 19, 1998, Yadkin, Inc. filed certain information as required by the Commission's September 30, 1996 order in Docket No. ER96–2603–000.

On October 19, 1998, South Jersey Energy Company filed certain information as required by the Commission's February 28, 1997 order in Docket No. ER97–1397–000.

On October 19, 1998, HQ Energy Services (U.S.) Inc. filed certain information as required by the Commission's November 12, 1998 order in Docket No. ER97–851–001.

On October 19, 1998, Kincaid Generation LLC filed certain information as required by the Commission's January 30, 1997 order in Docket No. ER97–30–000.

On October 19, 1998, WPS Energy Services, Inc. filed certain information as required by the Commission's April 16, 1996 order in Docket No. ER96–1088–000.

On October 19, 1998, Old Dominion Electric Cooperative filed certain information as required by the Commission's October 17, 1997 order in Docket No. ER97–4314–000.

On October 19, 1998, Watt Works, LLC filed certain information as required by the Commission's June 24, 1997 order in Docket No. ER97–2592–000.

On October 19, 1998, Texas-New Mexico Power Company filed certain information as required by the Commission's October 15, 1997 order in Docket No. ER97–4185–000.

On October 19, 1998, Delmarva Power & Light Company filed certain information as required by the Commission's July 31, 1996 order in Docket No. ER96–501–000.

4. Boston Edison Company

[Docket No. ER99–35–000]

Take notice that on October 22, 1998, Boston Edison Company (Boston Edison), tendered for filing a Standstill agreement with Wellesley Municipal Light Department.

Boston Edison states that copies of this filing have been posted and served upon the customers involved in Docket No. ER99–35–000, and the Massachusetts Department of Telecommunications and Energy.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Indiana Gas and Electric Company, PacifiCorp, Preferred Energy Services, Inc., Superior Electric Power Corporation, Phibro Inc., Tractebel Energy Marketing, Inc.

[Docket No. ER99–225–000, Docket No. ER99–216–000, Docket No. ER96–2141–009, Docket No. ER95–1747–012, Docket No. ER95–430–017, Docket No. ER94–142–020]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 16, 1998, Southern Indiana Gas and Electric Company filed certain information as required by the Commission's October 15, 1996 order in Docket No. ER96–2734–000.

On October 16, 1998, PacifiCorp filed certain information as required by the Commission's June 26, 1997 order in Docket No. ER97–2801–000.

On October 16, 1998, Preferred Energy Services, Inc. filed certain information as required by the Commission's August 13, 1996 order in Docket No. ER96–2141–000.

On October 16, 1998, Superior Electric Power Corporation filed certain information as required by the Commission's October 23, 1995 order in Docket No. ER95–1747–000.

On October 16, 1998, Phibro Inc. filed certain information as required by the Commission's June 9, 1995 order in Docket No. ER95–430–000.

On October 16, 1998, Tractebel Energy Marketing, Inc. filed certain information as required by the Commission's December 30, 1993 order in Docket No. ER94–142–000.

6. Consolidated Edison Company Of New York, Inc.

[Docket No. ER99–267–000]

Take notice that on October 22, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 129, a facilities agreement with Orange and Rockland Utilities, Inc., (O&R). The Supplement provides for an increase in the monthly carrying charges.

Con Edison states that a copy of this filing has been served by mail upon O&R.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company Of New York, Inc.

[Docket No. ER99–268–000]

Take notice that on October 22, 1998, Consolidated Edison Company of New

York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 2, a facilities agreement with Central Hudson Gas and Electric Corporation (CH). The Supplement provides for a decrease in the monthly carrying charges.

Con Edison has requested that this decrease take effect as of October 1, 1998.

Con Edison states that a copy of this filing has been served by mail upon CH.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas City Power & Light Company

[Docket No. ER99–269–000]

Take notice that on October 22, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated October 2, 1998, between KCPL and TransAlta Energy Marketing (U.S.) Inc. This Agreement provides for the rates and charges for Short-term Firm Transmission Service. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636–000.

KCPL proposes an effective date of October 13, 1998 and requests a waiver of the Commission's notice requirement to allow the requested effective date.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Kansas City Power & Light Company

[Docket No. ER99–270–000]

Take notice that on October 22, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated October 2, 1998, between KCPL and TransAlta Energy Marketing (U.S.) Inc. This Agreement provides for the rates and charges for Non-Firm Transmission Service. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636.

KCPL proposes an effective date of October 13, 1998, and requests waiver of the Commission's notice requirement.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER99–271–000]

Take notice that on October 22, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with NorAm Energy Services, Inc., (NorAm).

Wisconsin Electric respectfully requests an effective date of October 21, 1998, to allow for economic transactions.

Copies of the filing have been served on NorAm, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER99–272–000]

Take notice that on October 22, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with MidAmerican Energy Co., (MidAmerican).

Wisconsin Electric respectfully requests an effective date of October 21, 1998, to allow for economic transactions.

Copies of the filing have been served on MidAmerican, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Kentucky Utilities Company

[Docket No. ER99–273–000]

Take notice that on October 22, 1998, Kentucky Utilities Company (KU), tendered for filing an unexecuted Power Services Agreement between KU and El Paso Power Services Company under KU's Power Services Tariff, Rate PS.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Kentucky Utilities Company

[Docket No. ER99–274–000]

Take notice that on October 22, 1998, Kentucky Utilities Company (KU), tendered for filing an unexecuted Power Services Agreement between KU and PP&L, Inc., under KU's Power Services Tariff, Rate PS.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Commonwealth Electric Company, Cambridge Electric Light Company

[Docket No. ER99–275–000]

Take notice that on October 22, 1998, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and Southern Company Energy Marketing L.P.

These Service Agreements specify that the Customer has signed on to and has agreed to the terms and conditions of the Companies' Market-Based Power Sales Tariffs designated as Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9). These Tariffs, accepted by the FERC on February 27, 1997, and which have an effective date of February 28, 1997, will allow the Companies and the Customer to enter into separately scheduled short-term transactions under which the Companies will sell to the Customer capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Kentucky Utilities Company

[Docket No. ER99–276–000]

Take notice that on October 22, 1998, Kentucky Utilities Company (KU), tendered for filing an unexecuted Power Services Agreement between KU and Associated Electric Cooperative, Inc., under KU's Power Services Tariff, Rate PS.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. ONEOK Power Marketing Company, Inc.

[Docket No. ER99–295–000]

Take notice that on October 22, 1998, ONEOK Power Marketing Company, Inc., tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP), indicating that ONEOK Power Marketing Company, Inc., had completed all of the steps for pool membership. ONEOK Power Marketing Company, Inc., requests that the Commission amend the WSPP Agreement to include it as a member.

ONEOK Power Marketing Company, Inc., requests an effective date of November 1, 1998 for the proposed amendment. Accordingly, ONEOK Power Marketing Company, Inc., requests waiver of the Commission's

notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee and WSPP's General Counsel.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–29754 Filed 11–5–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. EC99–6–000, et al.**]**

Lake Benton Power Partners L.L.C., et al.; Electric Rate and Corporate Regulation Filings

October 28, 1998.

Take notice that the following filings have been made with the Commission:

1. Lake Benton Power Partners L.L.C.

[Docket No. EC99–6–000]

Take notice that on October 26, 1998, Lake Benton Power Partners L.L.C. (Lake Benton) filed a Notification of Changed Facts to reflect GECC Windco's intention to acquire a member interest in Lake Benton.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. ECK Generating, s.r.o.

[Docket No. EG99–14–000]

On October 23, 1998, ECK Generating, s.r.o. (Applicant), with its principal offices at Kladno, Dubska, Teplarna 272 03, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations. Applicant states that it will be engaged directly, or indirectly through one or more affiliates, as defined in Section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning and or/operating, an undivided interest in an eligible facility and selling electric energy at wholesale and making permitted foreign retail electric sales.

Applicant is a limited liability company organized under the laws of the Czech Republic that will own a portion of and lease a portion of a 344 MW generating plant near the City of Kladno in the Czech Republic.

Comment date: November 18, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Sigma Energy et. al.

[Docket Nos. ER97–4145–001, ER98–3433–001, ER96–1–012, ER91–195–027 thru 033, ER99–266–000, ER94–1061–018, ER95–1441–015, ER97–4116–002]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference room:

On October 21, 1998, Sigma Energy filed certain information as required by the Commission's October 8, 1997 order in Docket No. ER97–4145–000.

On October 21, 1998, JMF Power Marketing filed certain information as required by the Commission's July 17, 1998 order in Docket No. ER98–3433–000.

On October 21, 1998, PowerTec International, LLC filed certain information as required by the Commission's December 1, 1995 order in Docket No. ER96–1–000.

On October 21, 1998, Western Systems Power Pool filed certain information as required by the Commission's June 1, 1992 and May 13, 1993 orders as well as a deficiency letter dated September 22, 1998 from FERC's Division of Rate Applications, in Docket No. ER91–195–000.

On October 21, 1998, Wisconsin Electric Power Company filed certain information as required by the Commission's January 29, 1998 in Docket No. ER98–855–000.

On October 21, 1998, Rainbow Energy Marketing Corporation filed certain information as required by the Commission's June 10, 1994 letter order in Docket No. ER94–1061–000.

On October 21, 1998, Dupont Power Marketing Inc. filed certain information as required by the Commission's August 30, 1995 letter order in Docket No. ER95–1441–000.

On October 21, 1998, Inventory Management and Distribution Company, Inc. filed certain information as required by the Commission's September 25, 1997 order in Docket No. ER97–4116-000.

4. Boralex Stratton Energy, Inc.

[Docket No. ER98–4652–000]

Take notice that on October 23, 1998, Boralex Stratton Energy, Inc. (Boralex Stratton), petitioned the Commission for acceptance of Boralex Stratton Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Boralex Stratton intends to engage in the wholesale sale of electric power from a 47 MW small power production facility, fueled by biomass, which it is acquiring in the United States. Boralex Stratton is a wholly-owned subsidiary of Boralex Industries Inc., which is a wholly-owned subsidiary of Boralex Inc., a Canadian corporation which has registered as a Foreign Utility Company with the Securities & Exchange Commission. Boralex Inc., owns in whole or in part eight hydroelectric facilities and one gas-fired cogeneration facilities located in Canada, with an aggregate generation capacity of 61.4 MW. None of the electricity generated by Boralex Inc., is sold in or transmitted to the United States.

Comment date: November 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Company

[Docket No. ER99–35–000]

Take notice that on October 23, 1998, Boston Edison Company (Boston Edison), filed an executed Standstill Agreement with Wellesley Municipal Light Department in the above-captioned proceeding.

Boston Edison states that copies of this filing have been posted and served upon the customers involved in Docket No. ER99-35–000 and the Massachusetts Department of Telecommunications and Energy.

Comment date: November 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. New York State Electric & Gas Corporation

[Docket No. ER99–277–000]

Take notice that on October 23, 1998, New York State Electric & Gas

Corporation (NYSEG), tendered for filing executed Network Service and Network Operating Agreements between NYSEG and National Fuel Resources, Inc. These Agreements specify that the Transmission Customer has agreed to the rates, terms and conditions of NYSEG's currently effective open access transmission tariff and other revisions to the OATT applicable to all customers who take service under its retail access program.

NYSEG requests waiver of the Commission's 60-day notice requirements and an effective date of September 23, 1998, for the Service Agreements.

NYSEG has served copies of the filing on the New York State Public Service Commission and the Transmission Customer.

Comment date: November 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp

[Docket No. ER99–278–000]

Take notice that on October 23, 1998, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Letter Agreement between PacifiCorp and Eugene Water & Electric Board (EWEB).

Copies of this filing were supplied to EWEB, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: November 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–279–000]

Take notice that on October 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: November 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–280–000]

Take notice that on October 23, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: November 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Columbus Southern Power Company

[Docket No. ER99–281–000]

Take notice that on October 21, 1998, Columbus Southern Power Company (CSP), tendered for filing with the Commission a Facilities, Operations, Maintenance and Repair Agreement (Agreement) dated September 21, 1998, between CSP and South Central Power Company (hereinafter called SCP) and Buckeye Power, Inc., (hereinafter called Buckeye).

Buckeye has requested CSP provide a delivery point, pursuant to provisions of the Power Delivery Agreement between CSP, Buckeye Power, Inc. (hereinafter called Buckeye), The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and Toledo Edison Company, dated January 1, 1968.

CSP requests an effective date of January 15, 1999, for the tendered agreements.

CSP states that copies of its filing were served upon South Central Power Company, Buckeye Power, Inc., and the Public Utilities Commission of Ohio.

Comment date: November 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER99–282–000]

Take notice that on October 23, 1998, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Mutual Netting/Closeout Agreements between PacifiCorp and British Columbia Power Exchange Corporation, City of Glendale, City of Idaho Falls, The Montana Power Trading & Marketing Company, Tucson Electric Power Company and Silicon Valley Power.

Copies of this filing were supplied the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: November 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. The Dayton Power and Light Company

[Docket No. ER99–283–000]

Take notice that on October 23, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Coral Power L.L.C., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of the this filing were served and Coral Power, L.L.C., and the Public Utilities Commission of Ohio.

Comment date: November 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. The Dayton Power and Light Company

[Docket No. ER99–284–000]

Take notice that on October 23, 1998, The Dayton Power and Light Company (Dayton), tendered for filing a service agreements establishing with Coral Power, L.L.C., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of the this filing were served upon with Coral Power, L.L.C., and the Public Utilities Commission of Ohio.

Comment date: November 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Tucson Electric Power Company

[Docket No. ER99–286–000, ER99–290–000, ER95–692–015, ER96–2408–010, ER97–3888–005, ER97–4240–001, ER99–287–000, ER99–288–000, ER97–2517–005, ER97–2517–006, ER94–1475–014, ER96–105–012 and ER99–289–000]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 22, 1998, Tucson Electric Power Company filed certain information as required by the Commission's February 13, 1998 order in Docket No. ER98–1150–000.

On October 22, 1998, Commonwealth Electric Company and Cambridge Electric Light Company filed certain information as required by the Commission's February 27, 1997 order in Docket No. ER97–1068–000.

On October 22, 1998, TransCanada Power filed certain information as required by the Commission's June 9, 1995 order in Docket No. ER95–692–000.

On October 22, 1998, Avista Energy, Inc. filed certain information as required by the Commission's September 12,

1996 letter order in Docket No. ER96–2408–000.

On October 22, 1998, The Green Power Connection, Inc. filed certain information as required by the Commission's July 1, 1996 order in Docket No. ER97–3888–000.

On October 22, 1998, Granger Energy, L.L.C. filed certain information as required by the Commission's September 29, 1997 order in Docket No. ER97–4240–000.

On October 22, 1998, Tucson Electric Power Company filed certain information as required by the Commission's October 31, 1997 order in Docket No. ER97–4514–000.

On October 22, 1998, Central Illinois Light Company filed certain information as required by the Commission's June 2, 1998 order in Docket No. ER98–2440–000.

On October 22, 1998, Xenergy Inc. filed certain information as required by the Commission's June 9, 1997 order in Docket No. ER97–2517–000.

On October 22, 1998, Xenergy Inc. filed certain information as required by the Commission's June 9, 1997 order in Docket No. ER97–2517–000.

On October 22, 1998, Illinova Energy Partners, Inc. filed certain information as required by the Commission's May 18, 1995 order in Docket No. ER94–1475–000.

On October 22, 1998, U. S. Power & Light, Inc. filed certain information as required by the Commission's December 6, 1995 letter order in Docket No. ER96–105–000.

On October 22, 1998, Wisconsin Public Service Corporation filed certain information as required by the Commission's April 30, 1996 order in Docket No. ER96–780–000.

15. Wisconsin Power and Light Company

[Docket No. ER99–292–000]

Take notice that on October 23, 1998, Wisconsin Power and Light Company (WP&L), tendered for filing a signed Service Agreement under WP&L's Bulk Power Tariff between itself and Merchant Energy Group of the Americas, Inc.

WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of October 9, 1998.

Comment date: November 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER99–293–000]

Take notice that on October 23, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Amerada Hess Corporation. This Transmission Service Agreement specifies that Amerada Hess Corporation has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Amerada Hess Corporation to enter into separately scheduled transactions under which NMPC will provide transmission service for Amerada Hess Corporation as the parties may mutually agree.

NMPC requests an effective date of October 15, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Amerada Hess Corporation.

Comment date: November 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. California Independent System Operator Corporation

[Docket No. ER99–294–000]

Take notice that on October 23, 1998, the California Independent System Operator Corporation (ISO), tendered for filing an amendment to Appendix A, to the Responsible Participating Transmission Owner Agreement between the ISO and the Pacific Gas and Electric Company (PG&E). The ISO states that the amendment revises the Appendix to clarify an agreement listed under the Existing Contracts for a number of Existing Right holders and adds an agreement to the list of Existing Contracts for the City of Santa Clara.

The ISO states that this filing has been served on all parties listed on the Restricted Service List in the above-referenced dockets.

Comment date: November 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Commonwealth Edison Company

[Docket No. ER99–296–000]

Take notice that on October 23, 1998, Commonwealth Edison Company (ComEd), tendered for filing a Short-Term Firm Service Agreement with PECO Energy (PECO), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of September 30, 1998, for the service agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on PECO and the Illinois Commerce Commission.

Comment date: November 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Company of New Mexico

[Docket No. ER99–298–000]

Take notice that on October 23, 1998, Public Service Company of New Mexico (PNM), submitted for filing an executed service agreement with PacifiCorp Power Marketing, Inc., dated October 21, 1998, for non-firm point-to-point transmission service under the terms of PNM's Open Access Transmission Tariff. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: November 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Carolina Power & Light Company

[Docket No. ER99–299–000]

Take notice that on October 23, 1998, Carolina Power & Light Company tendered for filing a power purchase agreement with the South Carolina Public Service Authority. The sale will be made pursuant to CP&L Market Based Rate Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission and the South Carolina Public Service Authority.

Comment date: November 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Michael E. Rescoe and Bruce R. Worthington

[Docket No. ID–3247–000 and ID–3248–000]

Take notice that on October 23, 1998, Michael E. Rescoe and Bruce R. Worthington (Applicants) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director—PG&E Power Services Company

Director—PG&E Energy Trading Power Holdings Corporation

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–29753 Filed 11–5–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1759]

Wisconsin Electric Power Company; Notice of Availability of Draft Application and Preliminary Draft Environmental Assessment (DEA)

November 2, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 1759.[1]

c. *Applicant:* Wisconsin Electric Power Company.

d. *Name of Project:* Peavy Falls Hydroelectric Project.

e. *Location:* Michigamme River near Crystal Falls, Iron Mountain, and Kingsford, in Iron County, Michigan.

f. *Applicant Contact:* Ms. Rita L. Hayen, P.E., Wisconsin Electric Power Company, 333 W. Everett Street, P.O. Box 2046, Milwaukee, WI 53201–2046.

g. *FERC Contact:* Patti Leppert-Slack, (202) 219–2767.

h. Wisconsin Electric Power Company (Wisconsin Electric) mailed a copy of the Draft License Application and Preliminary DEA to all entities on October 20, 1998. The Commission received a copy of the Draft License Application and Preliminary DEA on October 22, 1998. Copies of these documents, as well as the resource study reports previously distributed for review and comment, are available for review at Wisconsin Electric's Office, 800 Industrial Park Drive, Iron Mountain, Michigan.

Copies are also available at the following libraries: Crystal Falls District Community Library, 401 Superior Ave., Crystal Falls, Michigan; Dickinson County Library, 401 Iron Mountain St., Iron Mountain, Michigan; and Dickinson County Library-Norway Branch, 620 Section St., Norway, Michigan.

i. As discussed in the Commission's June 14, 1996, letter to all parties, with this notice we are soliciting preliminary terms, conditions, and recommendations on the Draft License Application and Preliminary DEA.

j. All comments on the Draft License Application and Preliminary DEA should be sent to the address noted above in Item (f), with an original and five copies filed with the Commission at the following address: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE, Dockets—Room 1A, Washington, DC 20426.

All comments must include the project name and number, and bear the heading ''Preliminary Comments,'' ''Preliminary Recommendations,'' ''Preliminary Terms and Conditions,'' or ''Preliminary Prescriptions.'' Any party interested in commenting must do so on or before January 22, 1999.

David P. Boergers,

Secretary.

[FR Doc. 98–29755 Filed 11–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1759]

Wisconsin Electric Power Company; Notice of Availability of Draft Application and Preliminary Draft Environmental Assessment (DEA)

November 2, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 1759.[1]

c. *Applicant:* Wisconsin Electric Power Company.

d. *Name of Project:* Way Dam Hydroelectric Project.

e. *Location:* Michigamme River near Crystal Falls, in Iron and Dickinson Counties, Michigan.

f. *Applicant Contact:* Ms. Rita L. Hayen, P.E., Wisconsin Electric Power Company, 333 W. Everett Street, P.O. Box 2046, Milwaukee, WI 53201–2046.

g. *FERC Contact:* Patti Leppert-Slack, (202) 219–2767.

h. Wisconsin Electric Power Company (Wisconsin Electric) mailed a copy of the Draft License Application and Preliminary DEA to all entities on October 20, 1998. The Commission received a copy of the Draft License Application and Preliminary DEA on October 22, 1998. Copies of these documents, as well as the resource study reports previously distributed for review and comment, are available for review at Wisconsin Electric's Office, 800 Industrial Park Drive, Iron Mountain, Michigan.

Copies are also available at the following libraries: Crystal Falls District Community Library, 401 Superior Ave., Crystal Falls, Michigan; Dickinson County Library, 401 Iron Mountain St., Iron Mountain, Michigan; and Dickinson County Library—Norway Branch, 620 Section St., Norway, Michigan.

i. As discussed in the Commission's June 14, 1996, letter to all parties, with this notice we are soliciting preliminary terms, conditions, and recommendations on the Draft License Application and Preliminary DEA.

j. All comments on the Draft License Application and Preliminary DEA should be sent to the address noted above in Item (f), with an original and five copies filed with the Commission at the following address: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Dockets—Room 1A, Washington, DC 20426.

All comments must include the project name and number, and bear the heading ''Preliminary Comments,'' ''Preliminary Recommendations,'' ''Preliminary Terms and Conditions,'' or ''Preliminary Prescriptions.'' Any party interested in commenting must do so on or before January 22, 1999.

David P. Boergers,

Secretary.

[FR Doc. 98–29756 Filed 11–5–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Project No. 1759 currently consists of three developments, Way Dam, Twin Falls, and Peavy Falls Hydroelectric Projects. Wisconsin Electric intends to file separate license applications for each development.

[1] Project No. 1759 currently consists of three developments, Way Dam, Twin Falls, and Peavy Falls Hydroelectric Projects. Wisconsin Electric intends to file separate license applications for each development.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1759]

Wisconsin Electric Power Company; Notice of Availability of Draft Application and Preliminary Draft Environmental Assessment (DEA)

November 2, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 1759.[1]

c. *Applicant:* Wisconsin Electric Power Company.

d. *Name of Project:* Twin Falls Hydroelectric Project.

e. *Location:* Menominee River near Iron Mountain, Kingsford, and Norway, in Dickinson County, Michigan and Florence County, Wisconsin.

f. *Applicant Contact:* Ms. Rita L. Hayen, P.E., Wisconsin Electric Power Company, 333 W. Everett Street, P.O. Box 2046, Milwaukee, WI 53201–2046.

g. *FERC Contact:* Patti Leppert-Slack, (202) 219–2767.

h. Wisconsin Electric Power Company (Wisconsin Electric) mailed a copy of the Draft License Application and Preliminary DEA to all entities on October 20, 1998. The Commission received a copy of the Draft License Application and Preliminary DEA on October 22, 1998. Copies of these documents, as well as the resource study reports previously distributed for review and comment, are available for review at Wisconsin Electric's Office, 800 Industrial Park Drive, Iron Mountain, Michigan.

Copies are also available at the following libraries: Crystal Falls District Community Library, 401 Superior Ave., Crystal Falls, Michigan; Dickinson County Library, 401 Iron Mountain St., Iron Mountain, Michigan; and Dickinson County Library-Norway Branch, 620 Section St., Norway, Michigan.

i. As discussed in the Commission's June 14, 1996, letter to all parties, with this notice we are soliciting preliminary terms, conditions, and recommendation on the Draft License Application and Preliminary DEA.

j. All comments on the Draft License Application and Preliminary DEA should be sent to the address noted above in Item (f), with an original and five copies filed with the Commission at the following address: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE, Dockets—Room 1A, Washington, DC 20426.

All comments must include the project name and number, and bear the heading ''Preliminary Comments,'' ''Preliminary Recommendations,'' ''Preliminary Terms and Conditions,'' or ''Preliminary Prescriptions.'' Any party interested in commenting must do so on or before January 22, 1999.

David P. Boergers,

Secretary.

[FR Doc. 98–29757 Filed 11–5–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Project No. 1759 currently consists of three developments, Way Dam, Twin Falls, and Peavy Falls Hydroelectric Projects. Wisconsin Electric intends to file separate license applications for each development.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2072]

Wisconsin Electric Power Company; Notice of Availability of Draft Application and Preliminary Draft Environmental Assessment (DEA)

November 2, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2072.

c. *Applicant:* Wisconsin Electric Power Company.

d. *Name of Project:* Lower Paint Hydroelectric Project.

e. *Location:* Paint River near Crystal Falls, in Iron County, Michigan.

f. *Applicant Contact:* Ms. Rita L. Hayen, P.E., Wisconsin Electric Power Company, 333 W. Everett Street, P.O. Box 2046, Milwaukee, WI 53201–2046.

g. *FERC Contact:* Patti Leppert-Slack, (202) 219–2767.

h. Wisconsin Electric Power Company (Wisconsin Electric) mailed a copy of the Draft License Application and Preliminary DEA to all entities on October 20, 1998. The Commission received a copy of the Draft License Application and Preliminary DEA on October 22, 1998. Copies of these documents, as well as the resource study reports previously distributed for review and comment, are available for review at Wisconsin, Electric's Office, 800 Industrial Park Drive, Iron Mountain, Michigan.

Copies are also available at the following libraries: Crystal Falls District Community Library, 401 Superior Ave., Crystal Falls, Michigan; Dickinson County Library, 401 Iron Mountain St., Iron Mountain, Michigan; and Dickinson County Library-Norway Branch, 620 Section St., Norway, Michigan.

i. As discussed in the Commission's June 14, 1996, letter to all parties, with this notice we are soliciting preliminary terms, conditions, and recommendations on the Draft License Application and Preliminary DEA.

j. All comments on the Draft License Application and Preliminary DEA should be sent to the address noted above in Item (f), with an original and five copies filed with the Commission at the following address: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE, Dockets—Room 1A, Washington, DC 20426.

All comments must include the project name and number, and bear the heading ''Preliminary Comments,'' ''Preliminary Recommendations,'' ''Preliminary Terms and Conditions,'' or ''Preliminary Prescriptions.'' Any party interested in commenting must do so on or before January 22, 1999.

David P. Boergers,

Secretary.

[FR Doc. 98–29758 Filed 11–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2074]

Wisconsin Electric Power Company; Notice of Availability of Draft Application and Preliminary Draft Environmental Assessment (DEA)

November 2, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2074.

c. *Applicant:* Wisconsin Electric Power Company.

d. *Name of Project:* Hemlock Falls Hydroelectric Project.

e. *Location:* Michigamme River near Crystal Falls, in Iron County, Michigan.

f. *Applicant Contact:* Ms. Rita L. Hayen, P.E., Wisconsin Electric Power Company, 333 W. Everett Street, P.O. Box 2046, Milwaukee, WI 53201–2046.

g. *FERC Contact:* Patti Leppert-Slack, (202) 219–2767.

h. Wisconsin Electric Power Company (Wisconsin Electric) mailed a copy of the Draft License Application and Preliminary DEA to all entities on October 20, 1998. The Commission received a copy of the Draft License Application and Preliminary DEA on October 22, 1998. Copies of these documents, as well as the resource study reports previously distributed for review and comment, are available for review at Wisconsin Electric's Office, 800 Industrial Park Drive, Iron Mountain, Michigan.

Copies are also available at the following libraries: Crystal Falls District Community Library, 401 Superior Ave., Crystal Falls, Michigan; Dickinson County Library, 401 Iron Mountain St., Iron Mountain, Michigan; and Dickinson County Library-Norway Branch, 620 Section St., Norway, Michigan.

i. As discussed in the Commission's June 14, 1996, letter to all parties, with this notice we are soliciting preliminary terms, conditions, and recommendations on the Draft License Application and Preliminary DEA.

j. All comments on the Draft License Application and Preliminary DEA should be sent to the address noted above in Item (f), with an original and five copies filed with the Commission at the following address: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Dockets—Room 1A, Washington, DC 20426.

All comments must include the project name and number, and bear the heading ''Preliminary Comments,'' ''Preliminary Recommendations,'' ''Preliminary Terms and Conditions,'' or ''Preliminary Prescriptions.'' Any party interested in commenting must do so on or before January 22, 1999.

David P. Boergers,

Secretary.

[FR Doc. 98–29759 Filed 11–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2131]

Wisconsin Electric Power Company; Notice of Availability of the Draft Application and Preliminary Draft Environmental Assessment (DEA)

November 2, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2131.

c. *Applicant:* Wisconsin Electric Power Company.

d. *Name of Project:* Kingsford Hydroelectric Project.

e. *Location:* Menominee River near Iron Mountain, Kingsford, and Norway, the Dickinson County, Michigan and Florence County, Wisconsin.

f. *Applicant Contact:* Ms. Rita L. Hayen, P.E., Wisconsin Electric Power Company, 222 W. Everett Street, P.O. Box 2046, Milwaukee, WI 53201–2046.

g. *FERC Contact:* Patti Leppert-Slack, (202) 219–2767.

h. Wisconsin Electric Power Company (Wisconsin Electric) mailed a copy of the Draft License Application and Preliminary DEA to all entities on October 20, 1998. The Commission received a copy of the Draft License Application and Preliminary DEA on October 22, 1998. Copies of these documents, as well as the resource study reports previously distributed for review and comment, are available for review at Wisconsin Electric's Office, 800 Industrial Park Drive, Iron Mountain, Michigan.

Copies are also available at the following libraries: Crystal Falls District Community Library, 401 Superior Ave., Crystal Falls, Michigan; Dickinson County Library, 401 Iron Mountain St., Iron Mountain, Michigan; and Dickinson County Library-Norway Branch, 620 Section St., Norway, Michigan.

i. As discussed in the Commission's June 14, 1996, letter to all parties, with this notice we are soliciting preliminary terms, conditions, and recommendations on the Draft License Application and Preliminary DEA.

j. All comments on the Draft License Application and Preliminary DEA should be sent to the address noted above in Item (f), with an original and five copies filed with the Commission at the following address: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE, Dockets—Room 1A, Washington, DC 20426.

All comment must include the project name and number, and bear the heading ''Preliminary Comments,'' ''Preliminary Recommendations,'' ''Preliminary Terms and Conditions,'' or ''Preliminary Prescriptions.'' Any party interested in commenting must do so on or before January 22, 1999.

David P. Boergers,

Secretary.

[FR Doc. 98–29760 Filed 11–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

November 2, 1998.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Transfer of License.

b. *Project No.:* 11243–015.

c. *Date Filed:* September 21, 1998.

d. *Applicant:* Whitewater Engineering Corporation, Cordova Electric Cooperative, Inc.

e. *Name of Project:* Power Creek Hydroelectric.

f. *Location:* On Power Creek, near the town of Cordova, in southeast Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Thom A. Fischer, Whitewater Engineering Corporation, 625 Cornwall Avenue, Bellingham, WA 98225, (360) 733–3008.

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Comment Date:* December 14, 1998.

k. *Description of the Request:* Whitewater Engineering Corporation and Cordova Electric Cooperative, Inc. jointly request that the license be transferred to Cordova Electric Cooperative, Inc. to facilitate the development and financing of project activities.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 C.F.R. sections 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST'' or ''MOTION TO INTERVENE,'' as

applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Motions to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–29767 Filed 11–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

November 3, 1998

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: November 10, 1998, 10:00 A.M.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary Telephone (202) 208–0400 For A Recording Listing Items Stricken From or Added to the Meeting, Call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

CONSENT AGENDA—HYDRO

708TH MEETING—NOVEMBER 10, 1998

REGULAR MEETING (10:00 A.M.)

CAH–1.
DOCKET# P–2458, 028, GREAT NORTHERN PAPER COMPANY
OTHER#S P–2572, 012, GREAT NORTHERN PAPER COMPANY

CAH–2.
DOCKET# P–2486, 030, WISCONSIN ELECTRIC POWER COMPANY

CAH–3.
DOCKET# P–10856, 003, UPPER PENINSULA POWER COMPANY

CAH–4.
DOCKET# UL96–16, 003, CHIPPEWA AND FLAMBEAU IMPROVEMENT COMPANY
OTHER#S UL96–17, 002, CHIPPEWA AND FLAMBEAU IMPROVEMENT COMPANY

CAH–5.
OMITTED

CAH–6.
DOCKET# P–2523, 011, N.E.W. HYDRO, INC.
OTHER#S P–11496, 001, CITY OF OCONTO FALLS, WISCONSIN

Consent Agenda—Electric

CAE–1.
DOCKET# ER98–4582, 000, CU POWER CANADA LIMITED

CAE–2.
DOCKET# ER98–4540, 000, LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY

CAE–3.
DOCKET# ER98–3511, 000, FPL ENERGY MAINE HYDRO, INC.
OTHER#S ER98–3562, 000, FPL ENERGY MASON, LLC; ER98–3563, 000, FPL ENERGY WYMAN, LLC; ER98–3564, 000, FPL ENERGY WYMAN IV, LLC; ER98–3565, 000, FPL ENERGY AVEC, LLC; ER98–3566, 000, FPL ENERGY POWER MARKETING, INC.

CAE–4.
DOCKET# TX96–1, 000, CITIZENS UTILITIES COMPANY

CAE–5.
DOCKET# ER98–1033, 004, AUTOMATED POWER EXCHANGE, INC.

CAE–6.
DOCKET# EC98–50, 000, CAMBRIDGE ELECTRIC LIGHT COMPANY, CANAL ELECTRIC COMPANY, COMMONWEALTH ELECTRIC COMPANY AND MONTAUP ELECTRIC COMPANY
OTHER#S ER98–4088, 000, CAMBRIDGE ELECTRIC LIGHT COMPANY, CANAL ELECTRIC COMPANY, COMMONWEALTH ELECTRIC COMPANY AND MONTAUP ELECTRIC COMPANY
ER98–4115, 000, SOUTHERN ENERGY CANAL, L.L.C.
ER98–4116, 000, SOUTHERN ENERGY KENDALL, L.L.C.
ER98–4118, 000, SOUTHERN ENERGY NEW ENGLAND, L.L.C.

CAE–7.
DOCKET# ER97–3189, 011, PJM INTERCONNECTION, L.L.C.

CAE–8.
DOCKET# OA97–573, 000, ATLANTIC CITY ELECTRIC COMPANY
OTHER#S EL98–27, 000, DELMARVA POWER & LIGHT COMPANY; ER97–3189, 010, ATLANTIC CITY ELECTRIC COMPANY; OA97–586, 000, DELMARVA POWER & LIGHT COMPANY

CAE–9.
DOCKET# OA97–251, 000, WESTERN RESOURCES, INC.

CAE–10.
DOCKET# ER95–854, 000, KENTUCKY UTILITIES COMPANY

CAE–11.
OMITTED

CAE–12.
DOCKET# EL97–1, 000, OLD DOMINION ELECTRIC COOPERATIVE V. DELMARVA POWER & LIGHT COMPANY

CAE–13.
DOCKET# EL98–46, 001, LAGUNA IRRIGATION DISTRICT

CAE–14.
DOCKET# OA97–24, 001, CENTRAL POWER AND LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY; PUBLIC SERVICE CO. OF OKLAHOMA AND SOUTH-WESTERN ELECTRIC POWER CO.
OTHER#S ER98–4609, 000, CENTRAL POWER AND LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY, PUBLIC SERVICE CO. OF OKLAHOMA AND SOUTH-WESTERN ELECTRIC POWER CO.; ER98–4611, 000, CENTRAL POWER AND LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY, PUBLIC SERVICE CO. OF OKLAHOMA AND SOUTH-WESTERN ELECTRIC POWER CO.; OA97–24, 002, CENTRAL POWER AND LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY, PUBLIC SERVICE CO. OF OKLAHOMA AND SOUTH-WESTERN ELECTRIC POWER CO.

CAE–15.
DOCKET# EC97–5, 002, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY, CLEVELAND ELECTRIC ILLUMINATING

COMPANY AND TOLEDO EDISON COMPANY
CAE–16.
DOCKET# EC97–35, 001, NEW ENGLAND POWER POOL
CAE–17.
DOCKET# ER92–595, 004, PACIFIC GAS AND ELECTRIC COMPANY
OTHER#S ER92–596, 003, PACIFIC GAS AND ELECTRIC COMPANY; ER92–626, 004, SOUTHERN CALIFORNIA EDISON COMPANY, PACIFIC GAS AND ELECTRIC COMPANY AND SAN DIEGO GAS & ELECTRIC COMPANY
CAE–18.
DOCKET# ER98–2746, 001, FLORIDA POWER & LIGHT COMPANY
CAE–19.
DOCKET# OA96–18, 003, ALLEGHENY POWER SYSTEM, INC.
OTHER#S ER95–1468, 002, SOUTHERN COMPANY SERVICES, INC.; ER96–1085, 002, SOUTH CAROLINA ELECTRIC & GAS COMPANY; OA96–21, 001, PUBLIC SERVICE COMPANY OF COLORADO AND CHEYENNE LIGHT, FUEL AND POWER COMPANY; OA96–27, 001, SOUTHERN COMPANY SERVICES, INC.; OA96–33, 002, SOUTHWESTERN PUBLIC SERVICE COMPANY; OA96–39, 002, FLORIDA POWER & LIGHT COMPANY; OA96–42, 002, MIDAMERICAN ENERGY COMPANY; OA96–49, 003, SOUTH CAROLINA ELECTRIC & GAS COMPANY; OA96–64, 003, DAYTON POWER & LIGHT COMPANY; OA96–73, 002, FLORIDA POWER CORPORATION; OA96–74, 004, NEW ENGLAND POWER COMPANY; OA96–158, 003, ENTERGY SERVICES, INC.; OA96–162, 002, WASHINGTON WATER POWER COMPANY; OA96–193, 001, KENTUCKY UTILITIES COMPANY; OA96–202, 001, PUBLIC SERVICE COMPANY OF NEW MEXICO; OA96–203, 002, WESTERN RESOURCES, INC.
CAE–20.
DOCKET# ER98–1285, 001, PUBLIC SERVICE COMPANY OF NEW MEXICO
CAE–21.
DOCKET# EL97–10, 000, ALLEGHENY ELECTRIC COOPERATIVE, INC. V. PENNSYLVANIA ELECTRIC COMPANY AND METROPOLITAN EDISON COMPANY
CAE–22.
DOCKET# EL98–70, 000, EMERALD PEOPLE'S UTILITY DISTRICT V. BONNEVILLE POWER ADMINISTRATION
CAE–23.
DOCKET# EL97–55, 000, INDECK NORTH AMERICAN POWER FUND, L.P.
OTHER#S QF92–166, 006, GORDONSVILLE ENERGY, L.P.; QF92–167, 006, GORDONSVILLE ENERGY, L.P.; QF93–29, 005, AUBURNDALE POWER PARTNERS, L.P.
CAE–24.
DOCKET# OA98–12, 000, ALLIANT SERVICES, INC., INTERSTATE POWER COMPANY, WISCONSIN POWER & LIGHT COMPANY AND IES UTILITIES, INC.
OTHER#S OA97–130, 001, MINNESOTA POWER & LIGHT COMPANY; OA97–173, 001, CAMBRIDGE ELECTRIC LIGHT COMPANY AND COMMONWEALTH ELECTRIC COMPANY; OA97–185, 001, OKLAHOMA GAS & ELECTRIC COMPANY; OA97–234 001, WISCONSIN PUBLIC SERVICE COMPANY; OA97–294, 001, POTOMAC ELECTRIC POWER COMPANY; OA97–318, 001, ALLIANT SERVICES, INC., INTERSTATE POWER COMPANY, WISCONSIN POWER & LIGHT COMPANY AND IES UTILITIES, INC.; OA97–400, 001, SOUTHWESTERN PUBLIC SERVICE COMPANY; OA97–415, 001, ALLIANT SERVICES, INC., INTERSTATE POWER COMPANY, WISCONSIN POWER & LIGHT COMPANY AND IES UTILITIES, INC.; OA97–421, 001, ALLIANT SERVICES, INC., INTERSTATE POWER COMPANY, WISCONSIN POWER & LIGHT COMPANY AND IES UTILITIES, INC.; OA97–423, 001, PP&L, INC.; OA97–441, 001, MONTANA POWER COMPANY; OA97–443, 001, FLORIDA POWER & LIGHT COMPANY; OA97–447, 001, FLORIDA POWER CORPORATION; OA97–453, 001, MONTAUP ELECTRIC COMPANY; OA97–455, 001, IDAHO POWER COMPANY; OA97–457, 001, GPU ENERGY, JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY; OA97–515, 001, PACIFIC GAS & ELECTRIC COMPANY; OA97–590, 001, IDAHO POWER COMPANY; OA97–594, 001, PP&L, INC.; OA98–14, 000, EDISON SAULT ELECTRIC COMPANY

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# RP99–89, 000, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–2.
OMITTED
CAG–3.
DOCKET# RP99–94, 000, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–4.
DOCKET# TM99–1–166, 001, KANSAS PIPELINE COMPANY
CAG–5.
OMITTED
CAG–6.
DOCKET# RP99–25, 001, NORTHWEST PIPELINE CORPORATION
CAG–7.
OMITTED
CAG–8.
DOCKET# RP94–43, 016, ANR PIPELINE COMPANY
CAG–9.
DOCKET# RP98–220, 001, ENRON ENERGY SERVICES, INC. AND ENRON CAPITAL AND TRADE RESOURCES CORPORATION
OTHER#S RP98–220, 000, ENRON ENERGY SERVICES, INC. AND ENRON CAPITAL AND TRADE RESOURCES CORPORATION
CAG–10.
DOCKET# RP98–371, 003, WILLIAMS GAS PIPELINES CENTRAL, INC.
CAG–11.
DOCKET RP97–373, 015, KOCH GATEWAY PIPELINE COMPANY
CAG–12.
DOCKET# RP95–197, 033, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–13.
DOCKET# RP98–40, 011, PANHANDLE EASTERN PIPE LINE COMPANY
OTHER#S GP98–6, 002, ANADARKO PETROLEUM CORPORATION
GP98–7, 002, OXY USA, INC.; GP98–9, 002, AMOCO PRODUCTION COMPANY
CAG–14.
DOCKET# RP98–52, 010, WILLIAMS GAS PIPELINES CENTRAL, INC.
OTHER#S GP98–3, 002, OXY USA, INC.; GP98–4, 002, AMOCO PRODUCTION COMPANY; GP98–13, 002, MOBIL OIL CORPORATION; GP98–16, 002, UNION PACIFIC RESOURCES COMPANY; GP98–18, 002, ANADARKO PETROLEUM CORPORATION
CAG–15.
DOCKET# RP98–53, 011, K N INTERSTATE GAS TRANSMISSION COMPANY
OTHER#S GP98–2, 002, AMOCO PRODUCTION COMPANY; GP98–

15, 002, OXY USA, INC.; GP98–19, 002, UNION PACIFIC RESOURCES COMPANY
CAG–16.
DOCKET# OR95–7, 001, LONGHORN PARTNERS PIPELINE, L.P.
CAG–17.
DOCKET# OR98–12, 001, LONGHORN PIPELINE PARTNERS, L.P.
CAG–18.
DOCKET# RP96–209, 004, KOCH GATEWAY PIPELINE COMPANY
CAG–19.
DOCKET# MG98–15, 000, MARITIMES & NORTHWEST PIPELINE, L.L.C.
CAG–20.
DOCKET# CP98–167, 003, PG&E TRANSMISSION NORTHWEST CORPORATION
CAG–21.
DOCKET# CP96–790, 001, NAUTILUS PIPELINE COMPANY, L.L.C.
OTHER#S CP96–791, 001, NAUTILUS PIPELINE COMPANY, L.L.C.; CP96–792, 001, NAUTILUS PIPELINE COMPANY, L.L.C.
CAG–22.
DOCKET# CP97–724, 001, NORAM GAS TRANSMISSION COMPANY
CAG–23.
DOCKET# CP98–49, 002, K N WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY
CAG–24.
DOCKET# CP98–74, 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–25.
DOCKET# CP98–247, 001, MIDCOAST INTERSTATE TRANSMISSION, INC.
CAG–26.
DOCKET# CP98–305, 000, FLORIDA GAS TRANSMISSION COMPANY
CAG–27.
DOCKET# CP98–649, 000, NORTHERN NATURAL GAS COMPANY
OTHER#S CP98–652, 000, CONOCO, INC.
CAG–28.
DOCKET# CP98–747, 000, KOCH GATEWAY PIPELINE COMPANY AND MOBILE BAY PIPELINE COMPANY
CAG–29.
DOCKET# CP98–70, 000, UNION LIGHT, HEAT & POWER COMPANY
OTHER#S CP98–245, 000, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–30.
DOCKET# CP98–530, 000, EQUITRANS, L.P.

HYDRO AGENDA

H–1.
RESERVED

ELECTRIC AGENDA

E–1.
DOCKET# EC98–40, 000, AMERICAN ELECTRIC POWER COMPANY AND CENTRAL AND SOUTHWEST CORPORATION
OTHER#S ER98–2770, 000, AMERICAN ELECTRIC POWER COMPANY AND CENTRAL AND SOUTHWEST CORPORATION; ER98–2786, 000, AMERICAN ELECTRIC POWER COMPANY AND CENTRAL AND SOUTHWEST CORPORATION
ORDER ON MERGER APPLICATION.

Oil and Gas Agenda

I.
PIPELINE RATE MATTERS
PR–1.
DOCKET# RP97–431, 005, NATURAL GAS PIPELINE COMPANY OF AMERICA
ORDER ON SETTLEMENT.
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

David P. Boergers,

Secretary.

[FR Doc. 98–29901 Filed 11–4–98; 10:44 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Notice of Rate Order, Correction

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice; Correction.

SUMMARY: The Southeastern Power Administration published a document in the **Federal Register** of October 5, 1998, containing notice of interim approval of new rate schedules for Southeastern's Georgia-Alabama-South Carolina System. The document omitted the new rate schedules.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Samuel Elbert Building, 2 South Public Square, Elberton, GA 30635.

Dated: October 29, 1998.

Timothy J. Meeks,

Assistant Administrator for Power Marketing Liaison.

Wholesale Power Rate Schedule SOCO–1

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be transmitted and scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:
$2.66 Per kilowatt of total contract demand per month.
Energy Charge:
7.21 Mills per kilowatt-hour.
Generation Services:
$0.03 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$1.71 Per kilowatt of total contract demand per month as of February 1998 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the Transmission and Distribution Charges paid by the Government. The initial monthly transmission demand charge

shall be determined by multiplying the Government's Load Ratio Share time one twelfth (1/12) of Southern Companies' Annual Transmission Costs as specified in Schedule 1 of the Government-Company Contract. The transmission charges are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving Southern Companies' Open Access Transmission Tariff (OAT). The distribution charges may be modified by FERC pursuant to application by the Company under Section 205 of the Federal Power Act or the Government under Section 206 of the Federal Power Act.

Proceedings before FERC involving the OAT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Scheduling, System Control and Dispatch Service:
$0.07658 × (1154/1464) Per kilowatt of total contract demand per month.
Reactive Supply and Voltage Control from Generation Sources Service:
$0.16627 Per kilowatt of total contract demand per month.
Regulation and Frequency Response Service:
$0.24714 Per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. Applicable energy losses are as follows:

Transmission facilities: 3.0%
Distribution Substations: 0.9%
Distribution Lines: 2.25%

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by Southern Companies under Section 205 of the Federal Power Act or SEPA under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule SOCO–2

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be transmitted pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:
$2.66 Per kilowatt of total contract demand per month.
Energy Charge:
7.21 Mills per kilowatt-hour.
Generation Services:
$0.03 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$1.71 Per kilowatt of total contract demand per month as of February 1998 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the Transmission and Distribution Charges paid by the Government. The initial monthly transmission demand charge shall be determined by multiplying the Government's Load Ratio Share time one twelfth (1/12) of Southern Companies' Annual Transmission Costs as specified in Schedule 1 of the Government-Company Contract. The transmission charges are governed by and subject to refund based upon the determination in proceedings before the Federal Energy Regulatory Commission (FERC) involving Southern Companies' Open Access Transmission Tariff (OAT). The distribution charges may be modified by FERC pursuant to application by the Company under Section 205 of the Federal Power Act or the Government under Section 206 of the Federal Power Act.

Proceedings before FERC involving the OAT or the Distribution charge may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Scheduling, System Control and Dispatch Service:
$0.07658 X (1154/1464) Per kilowatt of total contract demand per month.
Reactive Supply and Voltage Control from Generation Sources Service:
$0.16627 Per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and

subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. Applicable energy losses are as follows:

Transmission facilities: 3.0%
Distribution Substations: 0.9%
Distribution Lines: 2.25%

These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by Southern Companies under Section 205 of the Federal Power Act or SEPA under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule SOCO–3

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida to whom power may be scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated (hereinafter called the Company) and the Customer. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects (hereinafter referred to collectively as the Projects) and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:
$2.66 Per kilowatt of total contract demand per month.
Energy Charge:
7.21 Mills per kilowatt-hour.
Generation Services:
$0.03 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Scheduling, System Control and Dispatch Service:
$0.07658 X (1154/1464) Per kilowatt of total contract demand per month.
Regulation and Frequency Response Service:
$0.24714 Per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule SOCO–4

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, and Florida served through the transmission facilities of Southern Company Services, Inc. (hereinafter called the Company) or the Georgia Integrated Transmission System. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects (hereinafter referred to collectively as the Projects) and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge
$2.66 Per kilowatt of total contract demand per month.
Energy Charge
7.21 Mills per kilowatt-hour.
Generation Services
$0.03 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Scheduling, System Control and Dispatch Service

$0.07658 X (1154/1464) Per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule ALA–1-I

Availability

This rate schedule shall be available to the Alabama Electric Cooperative, Incorporated (hereinafter called the Cooperative).

Applicability

This rate schedule shall be applicable to power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters, and Richard B. Russell Projects and sold under contract between the Cooperative and the Government. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz and shall be delivered at the Walter F. George, West Point, and Robert F. Henry Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge

$2.66 Per kilowatt of total contract demand per month.

Energy Charge:

7.21 Mills per kilowatt-hour.

Generation Services:

$0.03 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Southern Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Scheduling, System Control and Dispatch Service

$0.07658 x (1154/1464) Per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Energy to be Furnished by the Government

The Government will sell to the Cooperative and the Cooperative will purchase from the Government those quantities of energy specified by contract as available to the Cooperative for scheduling on a weekly basis.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule MISS–1–I

Availability

This rate schedule shall be available to the South Mississippi Electric Power Association (hereinafter called the Customer) to whom power may be wheeled pursuant to contracts between the Government and Alabama Electric Cooperative, Inc. (hereinafter called AEC).

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on AEC's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$2.66 Per kilowatt of total contract demand per month.

Energy Charge:

7.21 Mills per kilowatt-hour.

Generation Services:

$0.03 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$1.83 Per kilowatt of total contract demand per month as of February 1998 is presented for illustrative purposes.

This rate is subject to annual adjustment on January 1, and will be computed subject to the Appendix A attached to the Government-AEC contract.

Scheduling, System Control and Dispatch Service:

$0.07658 × (1154/1464) Per kilowatt of total contract demand per month.

Transmission, System Control, Reactive, and Regulation Services

The charges for Transmission, System Control, Reactive, and Regulation Services shall be governed by and subject to refund based upon the determination in the proceeding involving Southern Companies' Open Access Transmission Tariff.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Cooperative and the Cooperative will purchase from the Government those quantities of energy specified by contract as available to the Cooperative for scheduling on a weekly basis.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke–1

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted and scheduled pursuant to contracts between the Government and Duke Power Company (hereinafter called the Company) and the Customer. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedules does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:
$2.66 Per kilowatt of total contract demand per month.
Energy Charge:
7.21 Mills per kilowatt-hour.
Generation Services:
$0.03 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$1.15 Per kilowatt of total contract demand per month as of February 1998 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the Transmission Distribution Charges paid by the Government. The initial monthly transmission demand charge shall reflect the Government's Load Ratio Share Responsibility. The Load Ratio Share shall be computed each month and shall be the ratio of the Network Load to the average of the Company's Transmission System load for each of the 12 preceding months. The Company's Transmission System Load shall be the load as determined in Section 34.3 of the Company's Pro Forma Open Access Transmission Tariff (the Tariff). The Government shall pay a monthly demand charge which shall be determined by multiplying its Load Ratio Share by 1/12 of the Annual Transmission Revenue Requirement set forth in Attachment H of the Company's Tariff.

Proceedings before FERC involving the Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses of three per cent (3%)). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company under Section 205 of the Federal Power Act or SEPA under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke–2

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be transmitted pursuant to contracts between the Government and Duke Power Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on

the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:
$2.66 Per kilowatt of total contract demand per month.
Energy Charge:
7.21 Mills per kilowatt-hour.
Generation Services:
$0.03 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$1.15 Per kilowatt of total contract demand per month as of February 1998 is presented for illustrative purposes.

The initial transmission charge will be the Customer's ratable share of the Transmission Distribution Charges paid by the Government. The initial monthly transmission demand charge shall reflect the Government's Load Ratio Share Responsibility. The Load Ratio Share shall be computed each month and shall be the ratio of the Network Load to the average of the Company's Transmission System load for each of the 12 preceding months. The Company's Transmission System Load shall be the load as determined in Section 34.3 of the Company's Pro Forma Open Access Transmission Tariff (the Tariff). The Government shall pay a monthly demand charge which shall be determined by multiplying its Load Ratio Share by 1/12 of the Annual Transmission Revenue Requirement set forth in Attachment H of the Company's Tariff.

Proceedings before FERC involving the Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all the separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses of three per cent *3%)). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system. These losses shall be effective until modified by the Federal Energy Regulatory Commission, pursuant to application by the Company under Section 205 of the Federal Power Act or SEPA under Section 206 of the Federal Power Act or otherwise.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Duke-3

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be scheduled pursuant to contracts between the Government and Duke Power Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Savannah River Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:
$2.66 Per kilowatt of total contract demand per month.
Energy Charge:
7.21 Mills per kilowatt-hour.
Generation Services:
$0.03 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System, Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Further adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to a supply and the customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale power Rate Schedule Duke-4

Availability

This rate schedule shall be available to public goodies and cooperatives (any one of whom is hereinafter called the Customer) in North Carolina and South Carolina served through the transmission facilities of Duke Power Company (hereinafter called the Company) and the Customer. The Customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement with the Company. Nothing in this rate schedule shall preclude modifications to the aforementioned contracts to allow an eligible customer to elect service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell projects and sold under appropriate contracts between the Government and the customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Savannah River Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:
$2.66 Per kilowatt of total contract demand per month.
Energy Charge:
7.21 Mills per kilowatt-hour.
Generation Services:
$0.03 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Further adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Wholesale Power Rate Schedule Santee-1

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Authority's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:
$2.66 Per kilowatt of total contract demand per month.
Energy Charge:
7.21 Mills per kilowatt-hour.
Generation Services:
$0.03 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Transmission

$1.53 Per kilowatt of total contract demand per month as of February 1998 is presented for illustrative purposes.

The initial transmission rate is subject to annual adjustment on July 1 of each year, and will be computed subject to the formula contained in Appendix A to the Government-Authority Contract.

Proceedings before the Federal Energy Regulatory Commission involving the Authority's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contact which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses of two per cent (2%)). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Authority's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly Capacity Charge}}{\text{Number of days in billing month}}$$

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter call the Customer) in South Carolina to whom power may be wheeled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, Westpoint, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Authority's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$2.66 Per kilowatt of total contact demand per month.

Energy Charge:

7.21 Mills per kilowatt-hour.

Generation Services:

$0.03 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Transmission

$1.53 Per kilowatt of total contract demand per month as of February 1998 is presented for illustrative purposes.

The initial transmission rate is subject to annual adjustment on July 1 of each year, and will be computed subject to the formula contained in Appendix A to the Government-Authority Contract.

Proceedings before the Federal Energy Regulatory Commission involving the Authority's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government pay charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Wholesale Rate Schedule Santee-2

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive. Energy to be Furnished by the Government:

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses of two per cent (2%)). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Authority's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

Wholesale Power Rate Schedule Santee-3

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly Capacity Charge}}{\text{Number of days in billing month}}$$

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in South Carolina to whom power may be scheduled pursuant to contracts between the Government and South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:

$2.66 Per kilowatt of total contract demand per month.

Energy Charge:

7.21 Mills per kilowatt-hour.

Generation Services:

$0.03 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses).

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly Capacity Charge}}{\text{Number of days in billing month}}$$

Wholesale Power Rate Schedule Santee-4

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in South Carolina served through the transmission facilities of South Carolina Public Service Authority (hereinafter called the Authority). The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:
$2.66 Per kilowatt of total contract demand per month.
Energy Charge:
7.21 Mills per kilowatt-hour.
Generation Services:
$0.03 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Authority. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Authority's rate.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less applicable losses).

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly Capacity Charge}}{\text{Number of days in billing month}}$$

Wholesale Power Rate Schedule SCE&G–1

Availability

This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping

operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:
$2.66 Per kilowatt of total contract demand per month.
Energy Charge:
7.21 Mills per kilowatt-hour.
Generation Services:
$0.03 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$2.22 Per kilowatt of total contract demand per month as of February 1998 is presented for illustrative purposes.

The initial rate will be subject to annual adjustment on June 1 of each year and will be computed subject to the formula in Appendix A attached to the Government-Company contract.

Proceedings before the Federal Energy Regulatory Commission involving the Company's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less five and one-half (5.5) percent losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule SCE&G–2

Availability

This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be wheeled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a scheduling arrangement with the Government. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the delivery points of the Customer on the Company's transmission and distribution system.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:
$2.66 Per kilowatt of total contract demand per month.
Energy Charge:
7.21 Mills per kilowatt-hour.
Generation Services:
$0.03 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Transmission

$2.22 Per kilowatt of total contract demand per month as of February 1998 is presented for illustrative purposes.

The initial rate will be subject to annual adjustment on June 1 of each year and will be computed subject to the formula in Appendix A attached to the Government-Company contract.

Proceedings before the Federal Energy Regulatory Commission involving the Company's Open Access Transmission Tariff may result in the separation of charges currently included in the transmission rate. In this event, the Government may charge the Customer for any and all separate transmission and distribution charges paid by the Government in behalf of the Customer.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less five and one-half (5.5) percent losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00

midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule SCE&G–3

Availability

This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina to whom power may be scheduled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:
$2.66 Per kilowatt of total contract demand per month.
Energy Charge:
7.21 Mills per kilowatt-hour.
Generation Services:
$0.03 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule SCE&G–4

Availability

This rate schedule shall be available public bodies and cooperatives (any one of which is hereinafter called the Customer) in South Carolina served through the transmission facilities of South Carolina Electric & Gas Company (hereinafter called the Company). The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement. Nothing in this rate schedule shall preclude an eligible customer from electing service under another rate schedule.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer. This rate schedule does not apply to energy from pumping operations at the Carters and Richard B. Russell Projects.

Character of Service

The electric capacity and energy supplied hereunder will be delivered at the Projects.

Monthly Rate

The monthly rate for capacity, energy, and generation services provided under this rate schedule for the period specified shall be:

Capacity Charge:
$2.66 Per kilowatt of total contract demand per month
Energy Charge:
7.21 Mills per kilowatt-hour
Generation Services
$0.03 Per kilowatt of total contract demand per month.

Additional rates for Transmission, System Control, Reactive, and Regulation Services provided under this rate schedule shall be the rates charged Southeastern Power Administration by the Company. Future adjustments to these rates will become effective upon acceptance for filing by the Federal Energy Regulatory Commission of the Company's rate.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less applicable losses).

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and

control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Wholesale Power Rate Schedule Pump-1

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom power is provided pursuant to contracts between the Government and the customer.

Applicability

This rate schedule shall be applicable to the sale at wholesale energy generated from pumping operations at the Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The energy supplied hereunder will be delivered at the delivery points provided for under appropriate contracts between the Government and the Customer.

Monthly Rate

The rate for energy sold under this rate schedule for the months specified shall be:

$$\text{Energy Rate} = \left(C_{wav} \div F_{wav}\right) \div \left(1 - L_d\right)$$

[computed to the nearest $.00001 (1/100 mill) per kwh]

(The weighted average cost of energy for pumping divided by the energy conversion factor, quantity divided by one minus losses for delivery.)

Where:

$$C_{wav} = C_T \div E_t$$

(The weighted average cost of energy for pumping is equal to the total cost of energy for pumping divided by the total energy for pumping.)

$$C_T = C_p + C_s$$

(Total cost of energy for pumping is equal to the cost of energy purchased plus the cost of energy in storage carried over from the month preceding the specified month.)

$$E_T = E_p \times \left(1 - L_p\right) + E_s^{t-1}$$

(Total energy for pumping is equal to the energy purchased, after losses, plus the energy for pumping in storage as of the end of the month preceding the specified month.)

$$C_s = C_{wav}^{t-1} \times E_s^{t-1}$$

(Cost of energy in storage is equal to the weighted average cost of energy for pumping for the month preceding the specified month times the energy for pumping in storage at the end of the month preceding the specified month.)

C_p

=Dollars cost of energy purchased for pumping during the specified month, including all direct costs to deliver energy to the project.

E_p

=Kilowatt-hours of energy purchased for pumping during the specified month.

L_p

=Energy loss factor for transmission on energy purchased for pumping (Expected to be .03 or three percent.)

E_s^{t-1}

=Kilowatt-hours of energy in storage as of the end of the month immediately preceding the specified month.

C_{wav}^{t-1}

=Weighted average cost of energy for pumping for the month immediately preceding the specified month.

$$F_{wav} = E_G \div E_T$$

(Weighted average energy conversion factor is equal to the energy generated from pumping divided by the total energy for pumping)

E_G

=Energy generated from pumping.

L_d

=Weighted average energy loss factor on energy delivered by the facilitator to the customer. (This value will be a constant, currently estimated to be .01 or 1.0 percent.)

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

[FR Doc. 98–29804 Filed 11–5–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Notice of Availability of the Sutter Power Project Draft Environmental Impact Statement

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Availability and Notice of Public Hearings.

SUMMARY: In accordance with Section 102(2) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332, the Western Area Power Administration (Western) announces that the Sutter Power Project (SPP) Draft Environmental Impact Statement (EIS) is available for public review and comment. Calpine Corporation (Calpine) has submitted an application to the California Energy Commission (CEC) for the development, construction, and operation of the SPP, a 500-megawatt (MW) gas fueled, combined cycle, electric generating facility located north of Sacramento, California. This project would involve the construction of additional transmission facilities, as well as new natural gas pipelines. Calpine has approached Western concerning an interconnection with Western's Keswick-Elverta and Olinda-Elverta double-circuit 230-kilovolt (kV) transmission lines.

Western and CEC are ''joint lead agencies'' for purposes of satisfying the requirements of NEPA and the California Environmental Quality Act (CEQA), respectively. Western and CEC prepared this joint Draft EIS/Final Staff Assessment (FSA) to satisfy the requirements of both agencies, and will hold joint public hearings to receive formal comments on the Draft EIS/FSA according to the schedule below. Western and CEC will accept written and oral comments during the public review period.

DATES: Written comments on the draft EIS/FSA should be sent to the Environmental Project Manager or CEC Project Manager by December 14, 1998, at the addresses provided below. Those wishing to make oral comments may do so at the scheduled public hearings. Western and CEC will respond to all comments, both written and oral, in Western's final EIS and CEC's Presiding Member Proposed Decision. The hearings will be held at the Veteran's Memorial Community Building, 425 Circle Drive, Yuba City, CA, on November 2, 10, 12, and 16, 1998. Each hearing will begin at 9:00 a.m., with the exception of an additional hearing to be held on November 10, at 6:30 p.m. at the same location.

ADDRESSES: Comments on the Draft EIS/FSA may be directed to the following persons. For Western, address comments to: Ms. Loreen McMahon, Environmental Project Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, telephone (916) 353–4460, E-mail: mcmahon@wapa.gov. For CEC, address comments to Paul Richins, Project Manager, Energy Facilities Siting and Environmental Protection Division, California Energy Commission, 1516 Ninth Street, MS–15, Sacramento, CA 95814, Telephone: (916) 654–4074, E-mail: prichins@energy.state.ca.us.

FOR FURTHER INFORMATION CONTACT: For further information, to submit written comments, or to request a copy or summary of the Draft EIS, please call or write Western's Sierra Nevada Customer Service Regional Office or CEC at the addresses shown above. Additional information on the project and the CEC may be found on CEC's website at www.energy.ca.gov/sitingcases/sutterpower/index.html.

For general information on DOE's NEPA review process, please contact Ms. Carol Borgstrom, Director, NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Calpine proposes to construct SPP in Sutter County, California, on a portion of a 77-acre parcel of land owned by Calpine, that also houses its Greenleaf 1 cogeneration plant. Yuba City, California, is approximately 7 miles to the northeast; Oswald, California, is approximately 3.5 miles to the east; and Sacramento, California, is approximately 36 miles to the southeast of the proposed project site. The land surrounding the project area is farmland used to grow rice, walnuts, almonds, and other orchard crops. The SPP project would consist of a nominal 500 MW net electrical output natural gas-fired, combined cycle generating facility, a 230–kV switching station, and a new 230–kV transmission line to connect with Western's Keswick-Elverta and Olinda-Elverta double-circuit 230–kV transmission lines at some point south and west of the plant. A new 12-mile natural gas pipeline would be constructed to provide fuel for the project. Potable water and cooling water would be provided by an on site well system that will be developed as part of the project. Sanitary waste will be treated on-site. The treated and other waste water generated in the operation of the plant would be discharged to an existing surface drainage system.

SPP would be a ''merchant plant'; it would sell power on a short and midterm basis to customers, and on the spot market. Power purchases by customers would be voluntary, and all economic costs will be borne by Calpine. Calpine approached Western regarding an interconnection for the power produced by SPP. This interconnection would require Western to make facility additions to its existing system to incorporate additional power from new generation.

CEC, a regulatory agency of the State of California, has the statutory authority to license thermal powerplants of 50 MW or greater. CEC's review process ensures that needed energy facilities are authorized in an expeditious, safe, and environmentally acceptable manner. CEC prepares all environmental documentation by following CEQA, and maintains a staff of experts in more than 20 environmental and engineering disciplines to perform balanced, independent evaluations of complex projects. CEC has prepared this document in compliance with California Public Resources Code (Cal. Pub. Res. §§ 25500, *et seq.*); CEQA (Cal. Pub. Res. §§ 21000, *et seq.*) and its guidelines found at California Code of Regulations (Cal. Code Regs. tit. 14 §§ 15000, *et seq.*); and the regulations of CEC (Cal. Code Regs. tit. 20 §§ 1742.5, 1743, and 1744). The CEC process mirrors that of the Federal process; CEC's FSA document is equivalent to the Draft EIS.

Western, a power marketing agency of the U.S. Department of Energy (DOE), is responsible for the transmission and marketing of electric power in 15 western States through an extensive, complex, and integrated high-voltage power transmission system. Western has prepared this document in compliance with NEPA (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality regulations for implementing NEPA (40 CFR Parts 1500–1508), and the DOE regulations for compliance with NEPA (10 CFR Part 1021).

Because CEC has licensing responsibilities as well as responsibilities under CEQA, Western agreed to be a joint lead agency with CEC and to utilize CEC's expertise in siting issues. The review process was initiated when Calpine filed an Application for Certification (AFC) with CEC on December 15, 1997. On January 21, 1998, CEC accepted the AFC as complete which began CEC's 1-year review process. On February 13, 1998, Western published a Notice of Intent to Prepare an Environmental Impact Statement in the **Federal Register** (63 FR 7412–7413). A scoping meeting was held in Yuba City, California, on March 3, 1998. Additional public workshops that addressed various issues of concern were held on March 25, March 31, June 3, July 14, August 4, August 6, and August 12, 1998.

CEC maintains a mailing list of those interested in SPP. All persons and groups on that mailing list have been notified of the availability of the Draft EIS/FSA. A distribution has been made to various libraries and other repositories in the project area, as well as those agencies and persons that have already requested a copy. Copies of the Draft EIS/FSA are available for public review at the Sierra Nevada Customer Service Regional Office, Western Area Power Administration, 114 Parkshore Drive, Folsom, California; or at the Corporate Services Office, Western Area Power Administration, 1627 Cole Boulevard, Building 18, Golden, Colorado. This information is also available at the DOE Reading Room at the following address: U.S. Department of Energy Reading Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. CEC maintains copies for review at the Energy Commission Library, 1516 9th Street, Sacramento, California. Copies for review are also available at the Sutter County Community Service Department, 1160 Civic Center Boulevard, Yuba City, California, and at the Main Branch of the Sutter County Library, 705 Forbs Avenue, Yuba City, California.

During this time, Western and CEC have coordinated closely with other Federal, State, and local agencies such as the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the California State Department of Water Resources, the California State Department of Fish and Game, the Sacramento Municipal Utility District, the California Public Utilities

Commission, Pacific Gas and Electric Company, and several local authorities.

The results of these meetings have allowed Western and CEC to identify areas of concern raised by the public and other agencies. The visual and noise impacts of the plant and the new transmission line were a major concern of the people who live in the immediate area of the plant site. Other more general issues concerned water resources—the impact to nearby wells by a potential draw-down by SPP; water quality impacts to downstream users and fisheries; the use of surface ditches by the project; and potential impacts caused by localized flooding. Other concerns raised include air quality impacts, land use issues, impacts to agricultural operations, and the need for rezoning the site.

The Draft EIS/FSA presents analyses of the no action (no project) alternative, as well as four siting alternatives to the proposed site. These alternate sites were compared to the unmitigated impacts of the SPP proposed location. The potential impacts to each sensitive issue (water, air, natural resources, cultural resources, visual, noise, etc.) were analyzed and discussed in some detail in the Draft EIS/FSA. However, each of these alternate sites were found to have environmental problems. Alternatives to the proposed project, as well as individual mitigation measures, are proposed and applied where impacts approach a threshold of significance. Environmentally preferred options are detailed for each issue.

CEC will hold hearings on Calpine's proposal. These are held as evidentiary hearings with two commissioners present. All witnesses are sworn in and present information to the Commissioners. Each technical area will be discussed in this manner, so that the length of the hearing process depends on the amount of testimony that needs to be taken for each technical area. Following each portion of the hearing process, the public may comment on the evidence presented. A full transcript will be available following the hearings.

A decision on the proposed action will be made after considering comments on the Draft EIS/FSA, both written and those presented at the hearings announced above. The final EIS will present the full analysis of these comments and project alternatives that are proposed in the Draft EIS/FSA and present the final alternative that will be the subject of Western's and CEC's decisions on SPP.

Dated: October 20, 1998.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 98–29803 Filed 11–5–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5496–6]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed October 26, 1998 Through October 30, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980439, LEGISLATIVE DRAFT EIS, USA, NM, McGregor Range Military Land Withdrawal Renewal, Fort Bliss, Otera County, NM and TX, Due: February 09, 1999, Contact: Anthony Rekas (703) 614–4991.

EIS No. 980440, DRAFT EIS, AFS, MT, Taylor Fork Timber Sale and Road Restoration, Implementation, Buck Creek, Taylor Fork Creek and Eldridge Creek, Gallatin National Forest, Madison Ranger, Hebgen Lake Ranger District, Yellow Stone, Gallatin County, MT, Due: December 21, 1998, Contact: Julie Neff-Shea (406) 587–6706.

EIS No. 980441, DRAFT EIS, NPS, WA, Lake Roosevelt National Recreation Area, General Management Plan, Implementation, Ferry, Grant, Lincoln, Okanogan and Stevens Counties, WA, Due: January 31, 1999, Contact: Vaughn Baker (509) 633–9441.

EIS No. 980442, FINAL EIS, NPS, MI, Isle Royale National Park General Management Plan, Implementation, Keweenaw County, MI, Due: December 07, 1998, Contact: Michael Madell (402) 221–3493.

EIS No. 980443, FINAL EIS, COE, MN, ND, East Grand Forks, Minnesota and Grand Forks, North Dakota Flood Control and Flood Protection, Red River Basin, MN and ND, Due: December 07, 1998, Contact: John T. Shyne (651) 290–5270.

EIS No. 980444, DRAFT EIS, BLM, OR, Southeastern Oregon Resource Management Plan, Implementation, Comprehensive Framework of Managing Public Land, Malheur, Jordan and Andrew Resource Areas, Vale and Burns Districts, Malheur, Harney and Grant Counties, OR, Due: March 01, 1999, Contact: Gary Copper (541) 473–3144.

EIS No. 980445, DRAFT EIS, DOE, AZ, Griffith Energy Project, Construction and Operation, 520-Megawatt (MW) Natural Gas-Fired and Combined Cycle Power Plant, Right-of-Way Grant, Operating Permit and COE Section 404 Permit, Kingman, AZ, Due: December 21, 1998, Contact: John Holt (602) 352–2692.

EIS No. 980446, REVISED DRAFT EIS, USN, CA, Hunters Point (Former) Naval Shipyard Disposal and Reuse, Implementation, Revised Information, City of San Francisco, San Francisco County, CA, Due: January 05, 1999, Contact: Gary J. Munekawa (650) 244–3022.

EIS No. 980447, FINAL EIS, CGD, CA, I–880/CA–92 Interchange Reconstruction, I–880 from Winton Avenue to Tennyson Road and CA–92 from Hesperian Boulevard to Santa Clara Street, Funding, City of Hayward, Alameda County, CA, Due: December 07, 1998, Contact: Wayne Till (510) 437–3514.

EIS No. 980448, DRAFT EIS, AFS, OR, Beaver Creek Fuels Reduction and Associated Restoration Activities Project, Wallowa-Whitman National Forest, La Grande Ranger District, Union County, OR, Due: December 21, 1998, Contact: Cindy Whitlock (541) 962–8501.

EIS No. 980449, DRAFT EIS, AFS, WY, Cold Springs Ecosystem Management Project, Implementation, Enhancement of Tree Harvesting and Sale, Medicine Bow-Routt National Forests, Douglas Ranger District, Converse and Albany Counties, WY, Due: December 21, 1998, Contact: Malcolm R. Edward (307) 358–4690.

EIS No. 980450, FINAL EIS, COE, MD, Ocean City, Restoration of Assateague Island, Water Resources Study, Town of Ocean City, Worcester County, MD, Due: December 07, 1998, Contact: Stacey Underwood (410) 962–4977.

EIS No. 980451, FINAL EIS, COE, FL, Jacksonville Harbor Navigation Channel Deepening Improvements, Construction, St. Johns River, Duval County, FL, Due: December 07, 1998, Contact: Rea Boothby (904) 232–3453.

Amended Notices

EIS No. 980425, FINAL EIS, FHW, IL, Federal Aid Route 310/US 67 Expressway Study, Godfrey to Jacksonville, Funding and COE Section 404 Permit, Madison, Jersey, Greene, Morgan and Scott Counties, IL, Due: November 23, 1998, Contact: William C. Jones (708) 283–3510. Published FR—10–23–98—Due Date Correction.

EIS No. 980437, DRAFT SUPPLEMENT, EPA, CA, International Wastewater

Treatment Plant and South Bay Ocean Outfall, Updated Information, Interim Operation, Tijuana River, San Diego, CA, Due: November 30, 1998, Contact: Elizabeth Borowiec (415) 744–1165.

U.S. EPA had applied to the Council on Environmental Quality (CEQ) under Section 1502(c)(4) of the CEQ Regulations for the Approval of Alternative Procedures. CEQ has approved the request by EPA for a 30-day Review Period.

Dated: November 3, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–29841 Filed 11–5–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

ER–FRL–5496–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 19, 1998 Through October 23, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (62 FR 17856).

Draft EISs

ERP No. D–DOA–G36149–OK. Rating LO, Double Creek Watershed Plan, Implementation, Watershed Protection and Flood Prevention, National Economic Development (NED), Town of Ramona, Washington and Osage Counties, OK.

Summary: EPA had no objection to the selection of the lead agency's preferred alternative as described in the DEIS.

ERP No. D–FAA–E51046–NC. Rating EC2, Charlotte/Douglas International Airport, Construction and Operation, New Runway 17/35 (Future 18L/36R) Associated Taxiway Improvements, Master Plan Development, Approval Airport Layout Plan (ALP) and COE Section 404 Permit, Mecklenburg County, NC.

Summary: EPA's review found that the noise analysis was deficient and needs to be redone. Both general and transportation conformity criteria must be met for the project to go forward.

ERP No. D–FHW–L40209–WA. Rating EC2, WA–16/Union Avenue Vicinity to WA–302 Vicinity of Tacoma Improvements, Construction, Funding, Coast Guard Permit, COE Section 10 and 404 Permits, Pierce County, WA.

Summary: EPA had concerns with the likely increase of urban growth and the resulting impact. EPA requested that these issues be fully discussed in the final EIS.

ERP No. D–NOA–E39044–FL. Rating LO, Guana, Tolomato, Matanizas, Site Designation, National Estuarine Research Reserve, Management Plan, City of Jacksonville, St. Johns and Flagler Counties, FL.

Summary: EPA supports the proposed action.

ERP No. D–NOA–E39045–MS. Rating EC2, Grand Bay National Estuarine Research Reserve (NERR), Designation, To Conduct Research, Educational Project and Construction, East of the City of Biloxi, Jackson County, MS.

Summary: EPA requested additional information on phosphogypsum waste storage facility impacts on ground surface water quality. Comments were made on rock reed wastewater cell maintenance problems compared to conventional septic tank systems.

ERP No. DS–NOA–A64057–00. Rating EC2, Comprehensive Amendment Addressing Essential Fish Habitat in Fishery Management Plans for the South Atlantic Region for Shrimp, Red Drum, Coral, Coral Reefs and Live/Hard Bottom Habitat, Spiny Lobster, Snapper-Grouper, Coastal Migratory Pelagics and Golden Crab, South Atlantic Region.

Summary: EPA expressed environmental concerns that the Calico Scallop Fishery Management Plan contained data that was too old to fully assess impact of the fishery and collateral impacts threatened and endangered species. EPA requested that these issues be fully discussed in the next environmental document.

Final EISs

ERP No. F–BLM–G65021–00. Rio Grande Corridor Coordinated Resource Management Plan and Taos Management Plan Amendment, Activity-Level-Plans, Implementation, NM and CO.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–DOE–L08053–00. Lower Valley Transmission Project, Construction of a New 115 kV Transmission Line from Swan Valley Substation near Swan Valley, Special-Use-Permits, Bonneville and Teton Counties, ID and Teton County, WY.

Summary: Review of the final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–JUS–K80035–CA. Service Processing Center (SPC) for Detainees, Construction and Operation, Possible Sites, Stockton and Tracy Sites, San Joaquin Counties, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: November 3, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–29842 Filed 11–5–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6183–4]

Extension of the Policy on Enforcement of RCRA Section 3004(j) Storage Prohibition at Facilities Generating Mixed Radioactive/ Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Policy statement.

SUMMARY: EPA is announcing a limited extension of its policy (56 FR 42730, August 29, 1991) on the civil enforcement of the storage prohibition in sec. 3004(j) of the Resource Conservation and Recovery Act (RCRA) at facilities that generate ''mixed waste'' regulated under both the RCRA subtitle C hazardous waste program and the Atomic Energy Act of 1954, as amended (AEA). The policy affects only mixed wastes that are prohibited from land disposal under the RCRA land disposal restrictions (LDR) and for which there are no available options for treatment or disposal. EPA has determined that for a few of these mixed wastes, treatment technology and disposal capacity still is not commercially available. Based on this determination, EPA is hereby renewing for three years the August 1991 policy for those mixed wastes. For purposes of this policy statement, ''available treatment technology and disposal capacity'' means that a facility is commercially available to treat or dispose of a particular waste and the facility has either (1) a RCRA permit or interim status; (2) a research, development, and demonstration permit under 40 CFR 270.65; or (3) a land treatment permit under 40 CFR 270.63.

Pursuant to the terms of this policy, EPA will continue to treat violations of RCRA sec. 3004(j) as reduced priorities among EPA's potential civil enforcement actions. EPA's primary concerns are with mixed waste facilities (1) that are storing wastes for which treatment technology is commercially available, and (2) that are not managing their stored mixed waste in an environmentally responsible manner. Generators must regularly explore all treatment and disposal alternatives during the extension because new technologies may come on line at any time. If treatment technology or disposal capacity is available or becomes available, the generator must use it. EPA will employ RCRA enforcement authorities to ensure that this policy is not abused, with particular focus on ensuring that emerging treatment technologies are fully utilized and on confirming that those wastes for which no treatment exists are stored safely.

EFFECTIVE DATE: October 31, 1998.

FOR FURTHER INFORMATION CONTACT: Leslie Bell, Federal, State and Tribal Programs Branch, Office of Solid Waste; Telephone (703) 308–8888 or Mary Andrews, RCRA Enforcement Division, Office of Regulatory Enforcement; Telephone (202) 564–4011.

SUPPLEMENTARY INFORMATION:

I. Background

A. Mixed Waste and the LDR Storage Prohibition

''Mixed wastes'' are wastes that contain both a hazardous waste component regulated under Subtitle C of RCRA and a radioactive component consisting of source, special nuclear, or byproduct material regulated under the AEA. On July 3, 1986, EPA clarified that RCRA applies to the hazardous component of these wastes (51 FR 24504). The hazardous component of mixed wastes is subject to the land disposal restrictions in 40 CFR Part 268. The LDR requires generators to treat hazardous wastes to specified treatment standards.

The aspect of the LDR affected by the policy extension set forth in this notice is the ''storage prohibition'' enacted in the Hazardous and Solid Waste Amendments (HSWA), RCRA section 3004(j), 42 U.S.C. 6924(j), and 40 CFR 268.50. This provision prohibits any storage of a waste prohibited from land disposal (including mixed waste) except ''for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment, or disposal.'' EPA has concluded that storage of a waste pending development of treatment technology does not constitute storage to accumulate sufficient quantities to facilitate proper treatment or disposal. This interpretation was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *Edison Electric Institute* v. *EPA*, 996 F.2d 326 (D.C. Cir. 1993).

However, treatment and disposal options are limited for some mixed wastes, both currently generated and generated in the past. Therefore, commercial generators may have no option but to store those wastes for which treatment technology or disposal capacity is not yet available.

B. Mixed Waste Treatment Technology and Disposal Capacity

In the past year, EPA has visited hospitals, laboratories, nuclear power plants, universities, and treatment and disposal facilities. The Agency has also conducted research on emerging mixed waste treatment technologies, and has employed RCRA information gathering authority to collect information from several facilities regarding the treatment and disposal of their mixed wastes. The purpose of these efforts was to determine the extent to which generators have utilized available treatment and disposal alternatives, to ascertain whether there are mixed wastes that can not be treated, and to confirm that those wastes for which no treatment exists are stored safely and in compliance with interim status or a RCRA storage permit. As a result of its investigation, EPA believes that (1) currently treatment is available for most low level mixed wastes, but treatment continues to be unavailable for a few wastes, such as mixed wastes containing dioxins, PCBs, and lead based paint solids, and wastes with very high levels of radioactivity; and (2) where treatment technology is available, there is excess capacity at the commercial mixed waste treatment facilities.

In an effort to help generators locate mixed waste treatment, storage, and disposal facilities, EPA has developed an Internet HomePage that lists some commercially available mixed waste treatment, storage, and disposal facilities based on information received from vendors. The EPA Mixed Waste HomePage can be found at ''http://www.epa.gov/radiation/mixed-waste.'' This list should not be seen as complete or as a recommendation or endorsement of any of these facilities. This list only represents those companies that have expressed an interest in participating in EPA's Mixed Waste Internet HomePage. EPA does not endorse or promote technologies or companies that provide treatment, storage, or disposal capacity for any waste, including mixed waste. Companies that wish to participate should contact EPA's Office of Solid Waste at the number listed for this **Federal Register** notice.

II. Summary of Policy

A. Storage Prohibition Policy Extension

In this notice, EPA is announcing a limited extension of its policy (56 FR 42730, August 29, 1991) on civil enforcement of the storage prohibition in RCRA section 3004(j) at facilities that generate mixed wastes. This policy extension is limited to three years from October 31, 1998. Note that this extended policy applies only to those waste streams for which no treatment technology or disposal capacity is available. If treatment technology and disposal capacity are available, the generator must use it. This policy is not a final agency action, but is intended solely as guidance. This policy is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the policy provided in this extension or to act at variance with the policy, based on an analysis of specific site circumstances. The Agency also reserves the right to change this policy at any time.

The intent of this policy is to explain how RCRA section 3004(j) storage violations involving mixed wastes fit within the Agency's civil enforcement priorities. For generators that are storing mixed wastes for which no viable treatment technology or disposal capacity exists, EPA considers the violations of RCRA section 3004(j) to be a relatively low priority among EPA's potential civil enforcement actions so long as the wastes are stored in accordance with a RCRA permit or interim status and are stored in an environmentally responsible manner. Any enforcement activity arising from violations of RCRA section 3004(j) will generally focus on those facilities that store mixed wastes for which treatment technology is commercially available or fail to manage any mixed waste in an environmentally responsible manner.

In addition, generators of the affected mixed waste must be following prudent waste management practices to store their mixed wastes in a manner that minimizes risk to public health and the environment. In determining the civil enforcement priority of RCRA section 3004(j) storage violations at particular mixed waste generator facilities, the Agency recognizes a variety of indicators of environmentally responsible operation. These factors are

described in Section IV of this document.

EPA is currently developing an Advance Notice of Proposed Rulemaking that will request comment on several strategies to address overlapping regulatory requirements for mixed waste with low levels of radioactivity that is subject to both Nuclear Regulatory Commission and EPA oversight. The Agency expects to request comments on options for mixed waste storage and treatment, including storage for decay, and alternative suggestions for providing regulatory flexibility for mixed waste management.

B. Limitations on Scope

This policy affects only the priority placed on potential civil judicial and administrative enforcement actions that would arise from storing mixed wastes subject to the LDR in contravention of RCRA section 3004(j). This policy does not limit the Agency's enforcement authority, including its authority under RCRA section 7003 relating to imminent and substantial endangerment. The policy also is limited to those mixed waste streams for which treatment technology or disposal capacity is not commercially available. The mixed wastes covered by this policy must be mixed wastes when generated; a generator may not commingle radioactive waste streams with hazardous waste in order to come within the scope of this policy.

EPA intends that this policy apply both to mixed wastes generated during the term of the policy, and to existing inventories of mixed wastes already in storage. The policy does not cover other violations of RCRA storage requirements, such as the storage facility standards of Subparts I through L and DD of 40 CFR Parts 264 (permitted facility standards) or 265 (interim status facility standards), or their state equivalents. EPA emphasizes that this policy does not affect any requirement under RCRA to obtain a storage permit, which is generally required if mixed wastes are stored for greater than 90 days. The policy does not extend to potential criminal violations of RCRA, for which prosecutorial discretion rests solely with the United States Attorney General.

EPA intends to apply this policy to executive branch federal facilities, except facilities owned or operated by the Department of Energy (DOE) or by the joint Navy/DOE Naval Nuclear Propulsion Program (NNPP). The Federal Facilities Compliance Act of 1992 (FFCA), 42 U.S.C. 6912, 6939c and 6961, section 102(c)(3)(B) requires DOE and NNPP to be in compliance with (1) an approved plan to develop capacities and technologies to treat a facility's mixed waste; and (2) any order requiring compliance with such plan issued in accordance with RCRA section 3021(b), 42 U.S.C. 6939c. With respect to DOE and NNPP, EPA enforcement of RCRA section 3004(j) will be based on the terms contained in the plans and orders developed pursuant to RCRA section 3021, and not on the terms of this policy.

III. Applicability

Mixed waste is regulated by EPA in states that are not authorized for the RCRA base program. As of June 30, 1998, three states and four territories have not received RCRA base authorization. These states and territories are Alaska, American Samoa, Hawaii, Iowa, Northern Mariana Islands, Puerto Rico, and Virgin Islands. In these states and territories, EPA alone administers the RCRA program and therefore this policy applies in these states.

This policy is not applicable in states that are authorized for the RCRA ''base'' program but are not authorized for mixed waste because in these states, mixed waste is not subject to RCRA jurisdiction. As of June 30, 1998, those states are the District of Columbia, Maryland, Massachusetts, New Jersey, Pennsylvania, Rhode Island, Virginia, and West Virginia.

Mixed waste is regulated by EPA and the state in those states that are authorized for both the base program and for mixed waste. In states authorized for mixed waste that are not authorized to implement any or all of the LDR regulations, EPA implements the LDR provisions for all waste codes which the state has not yet been authorized. As of June 30, 1998, Indiana, Kentucky, Louisiana, Montana, Nebraska, New Hampshire, South Dakota, and Washington do not have authorization for a significant portion of the LDR program and thus this policy is applicable to many wastes generated in these states.

In states that are authorized for both mixed waste and portions of the LDR program, the state, as well as EPA, has authority to enforce those portions of the LDR program for which the state is authorized. This policy affects only the EPA enforcement programs. States that are authorized for both mixed waste and the LDR may choose to follow this federal policy, however, it is not binding on them. Therefore, generators should consult with their states for clarification of the state's policy with respect to storage of LDR prohibited mixed waste.

During the term of this policy, additional states may receive authorization for mixed waste or portions of the LDR program. Facility owners and operators should track the authorization status of their state programs in order to ascertain whether they are covered by this policy, or whether other restrictions based on state law might apply to mixed waste storage. Information on a state's authorization status for mixed waste can be found on the EPA Mixed Waste HomePage previously cited. EPA's State Authorization HomePage at ''http://www.epa.gov/epaoswer/hazwaste/state/index.htm'' also provides information on the status of authorization for mixed waste and LDR.

IV. Responsible Management of Mixed Waste

In order to demonstrate that they are pursuing environmentally responsible management of their mixed wastes (and therefore should be accorded a reduced civil enforcement priority for RCRA section 3004(j) violations), owners and operators of facilities generating and storing mixed wastes should undertake at least the following steps.

A. Inventory and Compliance Assessment of Storage Areas

RCRA regulations applicable to hazardous waste storage require facilities to maintain a record identifying each physical location or unit where mixed waste is stored and the method of storage, i.e., container or tank, see 40 CFR 264.73(b) or 265.73(b). The regulations also require regular inspection of these storage areas for compliance with applicable RCRA standards and permit requirements, including an assessment of compliance with the storage facility standards of 40 CFR Part 264 or Part 265, Subparts I–J and DD, or the state counterparts to these standards (see 40 CFR 264.15 or 265.15). Facilities must maintain records containing the results of the inspections as required by 40 CFR 264.73(b)(5) or 265.73(b)(5). EPA encourages facility owner/operators to take action promptly to correct any deficiencies, since EPA expects to focus its enforcement efforts regarding RCRA section 3004(j) violations on situations that indicate a disregard for compliance with the RCRA Subtitle C requirements.

B. Identification of Mixed Wastes

Facility owner/operators should maintain sufficient information to identify their mixed wastes. The identification should include the RCRA

waste codes for the hazardous components, the source of the hazardous constituents and discussion of how the waste was generated (if known), the generation rate and volumes of mixed wastes in storage, and any process information relied upon to identify mixed wastes or make determinations that wastes are subject to the LDR (see 40 CFR 264.73 or 265.73).

C. Waste Minimization Plans

EPA understands that many mixed waste generators have undertaken active measures to avoid the generation of mixed wastes. EPA continues to encourage mixed waste generators to develop a waste minimization plan (see 58 FR 31114, May 28, 1993, for guidance) to reduce or eliminate mixed wastes, to minimize the volume of regulated wastes generated, and to substitute non-hazardous materials.

D. Good Faith Efforts

This policy is limited in scope to those LDR-prohibited mixed wastes for which no treatment technology or disposal capacity is commercially available. Because additional treatment technology or disposal capacity may become available at any time in the future, facility owner/operators should be prepared to demonstrate ongoing good faith efforts to locate treatment technology and disposal capacity for each of their mixed wastes and to utilize any and all such treatment technology and disposal capacity.

Dated: October 31, 1998.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Sylvia Lowrance,

Acting Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 98–29819 Filed 11–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6186–3]

National Advisory Council for Environmental Policy and Technology; Environmental Capital Markets Committee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the Environmental Capital Markets Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), which provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues.

The Environmental Capital Markets Committee has been evaluating practical ways for the financial services industry to include the environmental performance of its clients as an integral part of its core credit, investment, and underwriting processes. Some of the major issues the Committee has been addressing are:

- The extent to which—and why—the financial services industry currently takes environmental factors into account in its credit, investment, and underwriting processes.
- The characteristics of current (and projected) environmental management systems (EMS) and practices that could help correlate environmental performance and financial performance.
- How information flowing from these EMSs/practices might be quantified in a manner that could be integrated into the financial service industry's credit, investment, and underwriting processes.

The ultimate goal of the Committee is to identify concrete actions that EPA, on its own or in cooperation with other Federal or state agencies, could take to help the financial services industry incorporate this environmental information into its core decision-making processes.

DATES: The Environmental Capital Markets Committee will hold a one day public meeting on Tuesday, December 1, 1998 from 9:00 a.m. to 6:00 p.m.

ADDRESSES: The meeting will be held at the Sheraton City Centre Hotel, 1143 New Hampshire Avenue N.W., Washington, D.C. Materials or written comments may be transmitted to the Committee through Mark Joyce, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management (1601F), 401 M Street S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Officer, Environmental Capital Markets Committee, at 202–260–6889.

Dated: October 28, 1998.

Mark Joyce,

Designated Federal Officer.

[FR Doc. 98–29815 Filed 11–5–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6186–5]

National Advisory Council for Environmental Policy and Technology Reinvention Criteria Committee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology's (NACEPT) Reinvention Criteria Committee. NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues.

The NACEPT Reinvention Criteria Committee(RCC) has been asked to help the Agency understand how incentives can be used most successfully to inspire firms, companies, communities, and individuals to go beyond mere compliance with existing regulations and to begin the process of addressing outstanding environmental problems. In particular, the committee is focusing on the following questions:

- What opportunities exist for EPA to use incentives to promote environmental stewardship in industry? In local communities? In the general public?
- How can EPA evaluate the effectiveness of incentives to encourage environmental stewardship that leads to improved environmental results? How can EPA measure the impact that incentives have on public confidence? What criteria should be used to decide whether the use of incentives is appropriate?
- How can the concept of performance ladders be used to tailor incentives most effectively?

This meeting is being held to provide the EPA with perspectives from representatives of state, local, and tribal governments, environmental organizations, academia, industry, and NGOs.

DATES: A two-day public meeting will be held Tuesday, December 8 and Wednesday, December 9, 1998 from 8:30 am to 5:00 pm.

ADDRESSES: The RCC will hold a two-day public meeting at the Embassy Suites Hotel, located at 1900 Diagonal Road in Alexandria,VA. Materials or written comments may be transmitted to the committee through Gwendolyn Whitt, Designated Federal Officer,

NACEPT RCC, U.S. EPA, Office of Cooperative Environmental Management (1601F), 401 M Street, SW, Washington, D.C. 20460. There will also be an opportunity for the public to make comments directly to the committee during the first day of the meeting. Requests to make public comments must be submitted no later than November 18, 1998 to Gwendolyn Whitt, at the address above or faxed to (202)–260–6882.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Whitt, Designated Federal Officer, NACEPT, at (202)–260–9484.

Dated: October 29, 1998.

Gwendolyn Whitt,

Designated Federal Officer.

[FR Doc. 98–29816 Filed 11–5–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6186–4]

National Advisory Council for Environmental Policy and Technology: Full Council Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a one-day meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. This plenary meeting is being held to provide the EPA with perspectives from representatives of state, local, and tribal governments, environmental organizations, academia, industry and NGOs. The NACEPT Council will focus on strategic planning for the 1999 NACEPT agenda, discuss the preliminary results of the NACEPT Self Study, and obtain updates on the activities of the NACEPT committees.

DATES: The one-day public meeting will be held on Thursday, December 10, 1998, from 8:45 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, Virginia. Material or written comments may be transmitted to the Council through Gwendolyn Whitt, Designated Federal Officer, NACEPT, U.S. EPA, Office of Cooperative Environmental Management (1601–F), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Whitt at the address shown above and 202–260–9484.

Dated: October 29, 1998.

Gwendolyn Whitt,

Designated Federal Officer.

[FR Doc. 98–29817 Filed 11–5–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34152; FRL–6039–1]

Oryzalin: Amendment to the Reregistration Eligibility Decision (RED)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Amendment to the Oryzalin Reregistration Eligibility Decision (RED) Document

SUMMARY: This notice amends the Oryzalin Reregistration Eligibility Decision (RED) Document, Case 0186, pursuant to section 4(g)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) 7 U.S.C. 136 et seq. This amendment revises the Personal Protective Equipment (PPE) requirements established in the RED for handlers of oryzalin end-use products. All handlers loaders of oryzalin liquid formulations will be required to wear: chemical-resistant gloves, shoes, socks, long-sleeved shirt, and long pants. In addition, mixers and loaders of liquid formulations will be required to wear a chemical-resistant apron. PPE for all other non-homeowner use scenarios will be determined based on the toxicity of the end-use product, as per guidance provided by the Worker Protection Standard (WPS). This notice does not apply to the homeowner uses of oryzalin.

DATES: Written comments on the RED decisions must be submitted by December 7, 1998.

ADDRESSES: Submit three copies of written comments identified with the docket control number ''OPP–34152'' by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION'' of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment in response to this notice 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 docket. Information not marked confidential will be included in the public docket without prior notice (including comments and data submitted electronically). The public docket and docket index, including printed paper versions of electronic comments that does not include any information claimed as CBI, 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.

The Oryzalin RED and Fact Sheet are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. Attn: Order Desk; Telephone No. (703) 487–4650. To obtain a copy of the Oryzalin RED, request publication number PB95–1791721; for the Oryzalin RED Fact Sheet request PB95–187670. This notice is also being forwarded to NTIS.

FOR FURTHER INFORMATION CONTACT: Carmelita White, Chemical Review Manager, Reregistration Branch III, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW, Washington, DC 20460. Office location and telephone number: Sixth floor, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703) 308–7038.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and various support documents 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 published a notice in the **Federal Register** of on March 8, 1995, (60 FR 12763)(FRL–4940–6), announcing the availability of the Oryzalin RED. In the RED, EPA provided its regulatory position on the registered uses of oryzalin based on the information and data available at that time. The RED set forth specific requirements for product reregistration eligibility. The Agency required certain PPE (coveralls over long-sleeved shirt and long pants,

chemical-resistant gloves, chemical-resistant footwear and chemical-resistant headgear for overhead exposures) for all non-homeowner uses of oryzalin. The RED also required a chemical-resistant apron for mixers and loaders of all non-homeowner, end-use oryzalin liquid products. The additional PPE were required to mitigate exposure to oryzalin due to carcinogenicity concerns.

In the Oryzalin RED, the Agency used the Pesticide Handler Exposure Database (PHED), Version 1.0, to derive exposure estimates for mixers, loaders and applicators. In August 1995, DowElanco requested that the Agency reconsider the additional PPE requirements. In responding to this request, the Agency conducted a new risk and exposure assessment using an updated version of this same database (PHED 1.1) that contained more accurate information. The updated PHED database became available after the Oryzalin RED document had been published. The refined assessment indicated that the PPE requirements in the RED were overly restrictive, however, the refined risk estimates still showed that baseline PPE (i.e., long-sleeved shirt, long pants, socks and shoes) were not adequately protective of mixers and loaders of the liquid formulations and applicators using hand-held equipment.

For mixers and loaders of oryzalin liquids and applicators using hand-held equipment, the Agency is now requiring, chemical-resistant gloves, long-sleeved shirt, long pants, shoes, and socks. Additionally, for mixers and loaders of oryzalin liquids, a chemical-resistant apron is required. PPE for all other formulations will be determined based on the acute toxicity of the end-use product, as per guidance provided by the Worker Protection Standard (WPS).

For the low-pressure handwand use scenario, the refined oryzalin exposure and risk assessment used the high-pressure handwand data set rather than the low-pressure handwand data set. The Agency believes that the high-pressure handwand data set more closely approximates the type of spray equipment used to apply oryzalin to ornamentals and turfgrass. The risk estimates for applicators with the high-pressure handwand scenario were 3.5 x 10–5 with the baseline PPE and chemical-resistant gloves, which is in the acceptable range for applicators.

Electronic copies of the REDs and RED fact sheets can be downloaded from the Pesticide Special Review and Reregistration Information System at (703) 308–7224, and also can be reached on the Internet via EPA's website at: http//www.epa.gov/REDs/.

The official record for this notice, as well as the public version, has been established for this notice under docket control number ''OPP–34152'' (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 or 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPP–34152). Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: October 23, 1998.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 98–29809 Filed 11–5–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–DE; FRL–6037–3]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; the State of Delaware's Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On August 27, 1998, the State of Delaware submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Delaware's application, provides a 45–day public comment period, and provides an opportunity to request a public hearing on the application.

DATES: Comments on the authorization application must be received on or before December 21, 1998. Public hearing requests must be received on or before December 7, 1998.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket control number ''PB–402404–DE (in duplicate) to: U.S. Environmental Protection Agency, Region III, Waste and Chemicals Management Division, Toxics Programs and Enforcement Branch (3WC33), 1650 Arch St., Philadelphia, PA 19103-2029.

Comments, data, and requests for a public hearing may also be submitted electronically to: johnson.artencia@epa.gov. Follow the instructions under Unit IV. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Artencia R. Johnson (3WC33), Waste and Chemicals Management Division, U.S. Environmental Protection Agency, Region III, 1650 Arch St., Philadelphia, PA 19103, Telephone: (215) 814–5754; e-mail: johnson.artencia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-92), entitled ''Lead Exposure Reduction.''

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL-5389-9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application.

Pursuant to section 404(b) of TSCA, EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before authorizing the program. Therefore, by this notice EPA is soliciting public comment on whether Delaware's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

II. State Program Description Summary

The following summary of Delaware's proposed program has been provided by the applicant.

The State of Delaware, Department of Health and Social Services (DHSS), Division of Public Health (DPH), Office of Lead Poisoning Prevention (OLPP), under whose jurisdiction Delaware's childhood lead reduction initiatives reside, is the entity within State government that has promulgated the required regulations. The program will be at least as protective of human health and the environment as future Federal programs and will provide for adequate enforcement. The main thrust of Delaware's OLPP Program will be devoted to implement and enforce the required regulations based upon enacted legislation authorizing the establishment of a statewide lead prevention program. These required regulations, entitled ''State of Delaware Regulations Governing Lead-Based Paint Hazards,'' became effective August 11, 1998. DPH's OLPP staff; Delaware State Housing Authority and other local housing authorities; Division of Professional Regulations; Department of Natural Resources and Environmental Control; City of Wilmington's Housing Inspections Department; private industry and industry trade associations (realtors, contractors, etc.); and other local and community-based outreach groups. The combined and coordinated efforts of these agencies will continue to play a vital role in the implementation of DPH's Office of Lead Poisoning Prevention Program.

Delaware has a total population of approximately 739,337 people located in three counties. The most heavily populated county is New Castle with a population of 478,068. The population of Kent County is 123,528 and of Sussex County 137,741. Wilmington is the largest city with a population of 71,517. Delaware's birth through 5–year old population is 60,284.

Universal screening legislation in Delaware, the Childhood Lead Poisoning Prevention Act, implemented in March 1995, requires private health care providers to order blood lead screening on all children at or around 12 months of age. All screening services are covered by third party insurance. Uninsured children and those without a medical home will continue to be screened at DPH Child Health Clinics. Environmental inspections and lead hazard reduction will occur at least in the homes of children with elevated blood lead levels >20 mcg/dL. In addition, targeted screening and investigations will occur in high risk neighborhoods, in day care centers, and the Head Start centers.

The lack of lead-safe housing is a problem in Delaware. Based on 1990 census information, it is estimated that approximately 144,000 owner and renter occupied homes in Delaware built prior to 1980 contain some level of lead-based paint. The DPH OLPP Program has been monitoring blood lead levels in children since 1975. Utilizing existing OLPP data and 1990 U.S. Census information, the DPH has identified target areas with the City of Wilmington. However, the existence of lead-based paint in these target areas has not been confirmed. In addition, there is insufficient data on housing in the remainder of the State to conclusively identify other high risk areas.

III. Federal Overfiling

TSCA section 404(b) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number ''PB–402404–DE.'' Copies of this notice, the State of Delaware's authorization application, and all comments received on the application are available for inspection in the Region III office, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at U.S. Environmental Protection Agency, Region III, Waste and Chemicals Management Division, Toxics Programs and Enforcement Branch (3WC33), 1650 Arch St., Philadelphia, PA.

Electronic comments can be sent directly to EPA at:
johnson.artencia@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6/1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''PB–402404–DE.'' Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

Commenters are encouraged to structure their comments so as not to contain information for which CBI claims would be made. However, any information claimed as CBI must be marked ''confidential,'' ''CBI,'' or with some other appropriate designation, and a commenters submitting such

information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

V. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), Executive Order 12866 (''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993), and Executive Order 13045 (''Protection of Children from Environmental Health Risks and Safety Risks,'' 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled, ''Enhancing Intergovernmental Partnerships'' (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representative of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant mandates.''

Today's action does not create and unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13984

Under Executive Order 13084, entitled, ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute and that significantly or uniquely effects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: October 27, 1998.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 98–29810 Filed 11–5–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–MD; FRL–6037–4]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; The State of Maryland Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On July 31, 1998, the State of Maryland submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Maryland's application, provides a 45–day public comment period, and provides an opportunity to request a public hearing on the application.

DATES: Comments on the authorization application must be received on or before December 21, 1998. Public hearing requests must be received on or before December 7, 1998.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket control number ''PB–402404–MD'' (in duplicate) to: Environmental Protection Agency, Region III, Waste and Chemicals Management Division, Toxics Programs and Enforcement Branch (3WC33), 1650 Arch St., Philadelphia, PA 19103-2029. Comments, data, and requests for a public hearing may also be submitted electronically to: johnson.artencia@epa.gov. Follow the instructions under Unit IV. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Artencia R. Johnson (3WC33), Waste and Chemicals Management Division, U.S. Environmental Protection Agency, Region III, 1650 Arch St., Philadelphia, PA 19103, Telephone: (215) 814–5754, e-mail address: johnson.artencia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of

1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-92), entitled ''Lead Exposure Reduction.''

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application.

Pursuant to section 404(b) of TSCA, EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before authorizing the program. Therefore, by this notice EPA is soliciting public comment on whether Maryland's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the Federal Register.

II. State Program Description Summary

The following summary of Maryland's proposed program has been provided by the applicant.

During the past decade, Maryland has developed lead-based paint activities programs which anticipated the standards of 40 Code of Federal Regulations (CFR) part 745. The Maryland program, as incorporated in State laws and regulations, also covers a substantially broader scope of activities than the current Federal standards. This application clearly demonstrates that the Maryland program meets the conditions for accreditation of TSCA 404(b) in that ''(1) the state program is at least as protective of human health and the environment as the Federal program under section 402. . . , and (2) such state program provides adequate enforcement.'' A letter certifying that the State program meets these criteria is included in the application package.

The Maryland Department of the Environment (MDE), Environmental Lead Division includes the equivalent elements and functions provided for in the model lead-based paint activities program of TSCA sections 402 and 404 and 40 CFR part 745. The Environmental Lead Division and the Lead Coordination Division are included in the Regulatory and Technical Assistance Program of the MDE Waste Management Administration.

Lead paint abatement regulations, adopted as COMAR 26.02.07 in 1988, anticipated many of the provisions of later Federal guidelines and regulations, such as the use of surface dust clearance standards; prohibition of open flame burning and uncontained abrasive paint removal methods; containment and cleanup of dust and debris; occupant protection; and worker training.

From the inception of the Maryland program in 1995, there has been a continuing effort to link procedures and standards to current research. Maryland regulations were the first to incorporate surface dust clearance standards. The federally funded lead-in-soil study was the largest research project in which MDE was directly engaged. MDE has also participated in smaller scale projects involving, for example, evaluation of encapsulant coatings and other alternative abatement methodologies.

MDE implemented new training and accreditation standards in 1996. In the absence of promulgated federal standards, Maryland adopted standards based on program experience as well as unique features of Maryland law. Specific training and accreditation criteria are published in COMAR 26.16.01 and are discussed in the text of this application. Experience gained in regulating lead paint abatement worker training, as presented by more than 20 different training providers under the earlier standards of COMAR 26.02.0711, provided a basis for the policies and procedures included in the final section of the application.

MDE experience during the past 10 years provides a pragmatic basis for regulatory compliance and enforcement. MDE staff functions include conducting environmental case management for lead-poisoned children; reviewing and monitoring abatement projects; developing enforcement cases for violations of lead paint inspection and abatement standards, and reviewing training course applications and auditing the delivery of training courses. Program policies and procedures are included in the final section of this application.

III. Federal Overfiling

TSCA section 404(b) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

IV. Public Record

The official record for this action, as well as the public version, has been established under docket control number ''PB–402404–MD.'' Copies of this notice, the State of Maryland's authorization application, and all comments received on the application are available for inspection in the Region III office, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at U.S. Environmental Protection Agency, Region III, Waste and Chemicals Management Division, Toxics Programs and Enforcement Branch (3WC33), 1650 Arch St., Philadelphia, PA.

Electronic comments can be sent directly to EPA at:
johnson.artencia@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6/1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''PB–402404–MD.'' Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

Commenters are encouraged to structure their comments so as not to contain information for which CBI claims would be made. However, any information claimed as CBI must be marked ''confidential,'' ''CBI,'' or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record.

V. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), Executive Order 12866 (''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993), and Executive Order 13045 (''Protection of Children from Environmental Health Risks and Safety Risks,'' 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled, ''Enhancing Intergovernmental Partnerships'' (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representative of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant mandates.''

Today's action does not create and unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13984

Under Executive Order 13084, entitled, ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute and that significantly or uniquely effects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: October 27, 1998.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 98–29811 Filed 11–5–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1249–DR]

Florida; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1249–DR), dated September 28, 1998, and related determinations.

EFFECTIVE DATE: October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 28, 1998:

Jackson County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–29792 Filed 11–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1254–DR]

Kansas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1254–DR), dated October 14, 1998, and related determinations.

EFFECTIVE DATE: October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas, is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 14, 1998:

Cherokee, Franklin, Jefferson, Johnson, and Wyandotte Counties for Public Assistance (Johnson and Wyandotte already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–29794 Filed 11–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1253–DR]

Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1253–DR), dated October 14, 1998, and related determinations.

EFFECTIVE DATE: October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri, is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 14, 1998:

Andrew, Caldwell, Carroll, Clay, Dade, DeKalb, Jackson, Livingston, Macon, Miller, Moniteau, Morgan, Platte, Polk, and Ray Counties for Public Assistance (Carroll, Clay, and Jackson already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–29793 Filed 11–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1256–DR]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1256–DR), dated October 19, 1998, and related determinations.

EFFECTIVE DATE: October 19, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 19, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Missouri, resulting from severe storms and flooding on July 10–31, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act'').

I, therefore, declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If at a later date Public Assistance is warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Curtis D. Musgrave of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Missouri to have been affected adversely by this declared major disaster: Jackson and St. Louis Counties and the City of St. Louis for Individual Assistance.

All counties within the State of Missouri are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 98–29795 Filed 11–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1257–DR]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1257–DR), dated October 21, 1998, and related determinations.

EFFECTIVE DATE: October 21, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 21, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from severe storms, flooding, and tornadoes beginning on October 17, 1998, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert E. Hendrix of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

Bastrop, Bexar, Burleson, Caldwell, Calhoun, Colorado, Comal, DeWitt, Fayette, Goliad, Gonzales, Guadalupe, Hays, Jackson, Karnes, Refugio, Travis, Victoria, Wharton, and Wilson Counties for Individual Assistance.

All counties within the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 98–29796 Filed 11–5–98; 8:45 am]

BILLING CODE 6718–02–P

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 NW., 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.: 203–011305–005.

Title: United Alliance Agreement.

Parties: Hanjin Shipping Co., Ltd., DSR-Senator Lines GmbH, Cho Yang Shipping Company, Ltd., United Arab Shipping Co. (S.A.G.)

Synopsis: The proposed amendment consolidates into the Tricontinental Service Agreement the vessel-sharing authorities and trade areas of three other agreements involving two or more of the parties: (1) The AMA Agreement, FMC Agreement No. 232–011481; the Tricon/Hanjin Agreement, FMC Agreement No. 232–011519; and the Hanjin/Tricon Slot Charter Agreement, FMC Agreement No. 232–0011521. When this amendment becomes effective, the three other agreements will be cancelled, and the parties will operate under this single consolidated agreement as the United Alliance.

Agreement No.: 202–011576–002.

Title: South American Independent Lines Association.

Parties: Interocean Lines, Inc., Seaboard Marine, Ltd., Trinity Shipping Line, S.A.

Synopsis: The proposed amendment would add Panama to the geographic scope of the Agreement.

Dated: November 2, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–29740 Filed 11–5–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0974]

Enhancement of Federal Reserve Net Settlement Payment Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of service enhancement.

SUMMARY: The Board of Governors has approved enhancements to the net settlement services that the Federal Reserve Banks offer to financial institutions with Federal Reserve accounts that participate in multilateral settlements for private-sector clearing arrangements. The enhanced service combines and improves selected features from the Reserve Banks' existing net settlement services and may be used for either gross or net multilateral settlements. The service is fully automated and provides finality of settlement intraday on the settlement day to participants in clearing arrangements using the service. The service is intended to facilitate improvements in the operational efficiency of clearinghouses and reduce operational and settlement risk for participants.

EFFECTIVE DATE: March 29, 1999.

FOR FURTHER INFORMATION CONTACT: Paul W. Bettge, Assistant Director (202/452–

3174); Myriam Y. Payne, Senior Financial Services Analyst (202/452–3219); for the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

SUPPLEMENTARY INFORMATION:

I. Background

The Reserve Banks offer net settlement services to depository institutions that participate in clearinghouses and clearing arrangements for checks, as well as Automated Clearing House (ACH), automated teller machine (ATM), point-of-sale (POS) networks, and other transactions. The arrangements are typically organized as groups of three or more participating depository institutions that exchange payment instructions, account for the value exchanged, and settle balances multilaterally. Typically, the agent [1] for the arrangement computes the net amounts owed to or by each participant [2] after netting all the transactions on a multilateral basis. The calculated net amounts represent either a net debit or a net credit for each participant. If the clearinghouse uses the Reserve Banks' net settlement services, the multilateral differences may be settled by transferring funds between the accounts of the settling participants on the books of the Reserve Banks.

Currently, the Reserve Banks offer two basic types of net settlement services. In the traditional model, the clearinghouse agent provides a settlement sheet (in either paper or electronic form) to a Reserve Bank on the settlement date. The Reserve Bank then posts a net debit or a net credit to the Federal Reserve account of each settling participant. Posted credits represent available funds for the purpose of intraday cash management and overnight reserve management.[3] The Reserve Banks, however, do not provide settlement finality until the business day after the settlement day. They reserve the right to reverse settlement debits and credits if a participant is unable to cover its settlement debit. This methodology creates the possibility of a settlement failure by a clearinghouse on the day following the settlement day. Because these dating conventions refer to banking days, reversals may occur on the third or even the fourth calendar day following settlement.

The traditional settlement sheet service offers clearinghouses a familiar and inexpensive mechanism to achieve settlement. This service, however, increases the duration of settlement risk to clearinghouse participants and their customers because settlement entries are provisional until the banking day after the settlement day. Another disadvantage is that some versions of the service lack the security controls needed to ensure the authenticity of settlement information provided to the Reserve Bank and to safeguard the integrity of the settlement. In addition, the design of the traditional service does not include automated risk-management controls for verifying the Federal Reserve account balances of participants with net debit positions. To help control credit risk, the Reserve Banks rely on the right to reverse net settlement entries on the banking day following the settlement day if a participant is not able to cover its net debit obligation. As a result, the traditional service does not provide effective tools for monitoring or controlling risk to the Reserve Banks at the point the risk is incurred.

In 1990, the Board approved an interdistrict net settlement service with settlement-day finality for a national ACH clearinghouse. In this type of service, individual participants with net debit positions send Fedwire funds transfers to a settlement account at a designated Reserve Bank. Once funds transfers have been received into the settlement account to cover all net debits, the clearing arrangement's agent sends Fedwire funds transfers from the settlement account to the accounts of participants in net credit positions. Under normal circumstances, this process is completed on the settlement day. Because the service uses Fedwire funds transfers, settlement payments are final and irrevocable on the settlement day.

The Fedwire-based net settlement service provides intraday finality on the settlement day, thereby reducing the duration of credit risk to clearinghouse participants. It also offers Reserve Banks significantly greater control over credit risk because of the use of Fedwire and the associated real-time verification of Federal Reserve account balances performed through the Account Balance Monitoring System (ABMS). Fedwire funds transfers initiated by clearinghouse participants that would cause overdrafts beyond established parameters can be rejected. These capabilities permit Reserve Banks to perform automated intraday risk management on the settlement day, when settlement information becomes available and before settlement entries are posted to Federal Reserve accounts.

Relying on the initiation of individual Fedwire funds transfers to conduct multilateral settlement, however, increases the logistical complexity of settlement for certain clearing arrangements. For example, a settlement for a clearinghouse with a large number of participants could involve coordinating hundreds of individual Fedwire funds transfers that have to be sent and received within narrow time frames in order to complete scheduled settlements.

II. The June 1997 Proposal

In June 1997, the Board requested comments on a proposal that Reserve Banks offer an enhanced net settlement service to depository institutions that participate in clearinghouse arrangements (62 FR 32118, June 12, 1997). The proposed service would combine and improve selected features from the Reserve Bank's existing net settlement services. Under the proposal, the Reserve Banks would offer a fully automated settlement service with finality of settlement intraday on the settlement day. The agent for the clearinghouse would submit an electronic file containing the settlement information for each settling participant. The enhanced service would accept and process settlement files during a predefined settlement period. The service would include edits and controls to ensure the authenticity and validity of the settlement file. Once all initial edits have been completed, the service would check the account balance of settling participants that fall within established risk parameters in the ABMS and that have debit settlement positions. If the debit participants have available account balances [4] sufficient to cover their settlement obligations, their Federal Reserve accounts would be debited and funds would be transferred to a settlement account held on the books of a designated Reserve Bank. The transfer of funds from the account of a participant with a debit position would be treated as a final and irrevocable transaction. When all funds have been transferred from the account of the debit participants to the settlement account, the enhanced service would transfer final funds out of the settlement account and credit the Federal Reserve account

[1] The agent is the party designated by the participants to act on behalf of the clearinghouse.

[2] A settling participant in a clearinghouse that uses a Reserve Bank net settlement service is a financial institution with a Federal Reserve account that is debited or credited to transfer the funds needed to complete the settlement. In contrast, non-settling participants typically settle through a settling participant.

[3] The posting time for net settlement entries is chosen by each clearinghouse within the requirements of the Board's *Daylight Overdraft Transaction Posting Rules*.

[4] The available account balance is defined as the institution's Federal Reserve account balance plus any available intraday credit.

of each participant with a credit position.

If a participant with a debit position did not have an available account balance sufficient to cover its settlement obligation, the Federal Reserve would notify the participant and the agent. The agent would then be expected to take action as determined by the rules of the clearing organization. For example, the organization could choose to fund the settlement account to complete the settlement by drawing on a preestablished line of credit. Alternatively, the agent might request that the Reserve Bank cancel the settlement and return all funds in the settlement account to the participants with debit positions. After a defined period, if the organization had not been able to complete or cancel the settlement, the Reserve Bank would return all the funds in the settlement account to the participants with debit positions. The terms of the enhanced service would permit the agent to submit a revised settlement file in the event of a settlement failure.

III. Enhanced Settlement Service

The Board is approving an enhanced settlement service that retains the essential characteristics described in the proposal issued for comment in 1997. First, by providing settlement-day finality, the enhanced service will reduce the duration of credit risk to private-sector clearinghouse participants relative to the Federal Reserve's traditional net settlement service. Second, the enhanced service will improve operational efficiency and reduce operational risk for clearinghouse participants by offering a settlement mechanism that does not require the origination of individual Fedwire funds transfers to achieve settlement-day finality. In addition, the enhanced service enables the Reserve Banks to manage and limit risk by incorporating risk controls that are as robust as those used currently in the Fedwire-based net settlement service.

Service Availability and Features—The enhanced service will be available to financial institutions with Federal Reserve accounts that participate in multilateral settlements for private-sector clearing arrangements. The enhanced service will provide clearing arrangements with the capability to settle the obligations that result from their payments exchange on either a net or gross basis. In addition, the service approved by the Board incorporates the following features:

1. The Federal Reserve will provide settlement services during a business day beginning at 8:30 a.m. Eastern Time (ET) and concluding before 6:00 p.m. ET (the settlement window). A file-submission deadline will be established approximately thirty to sixty minutes before the end of the settlement window (the file-submission window) to ensure that all files received by the file-submission window can be processed before the close of the settlement window. The specific hours of operation of the service, however, will be reviewed periodically and may be modified to reflect changes in the operating hours of the Fedwire system or the business needs of settlement participants.

2. Agents will submit settlement files electronically during the predefined file-submission window. The initial release of the application software will support file submission using a standard Fedline terminal or computer interface bulk data connection. Preformatted Fedline screens will also be provided for clearinghouse arrangements that wish to key in the settlement information. In addition, internet browser capability for file submission and access to the service is being considered for a future release.

3. Agents may transmit any number of settlement files per settlement day. The service will process the settlement files for a particular settlement arrangement one at a time in the order they are received. Files received after the close of the settlement window will be held in a queue to be processed in the order received at the opening of the following day's settlement window, as long as the settlement date on the file corresponds with the following settlement date.

4. Controls and edits in the application will ensure, among other things, that the file has been transmitted by an agent authorized by the participants in the clearing arrangement, that the file has been transmitted from an authorized terminal, that the file contains settlement entries from authorized participants only, and that the sum of all the settlement debits equals the sum of all the settlement credits.

5. Settlement debit entries will be passed to the ABMS for posting to each settling participant's Federal Reserve account. The ABMS will check the available account balance of all participants that fall within established risk parameters to determine if the settlement debits can be covered. If the available account balance is sufficient to cover the participant's settlement debit, the participant's account will be debited and an offsetting credit will be posted immediately to a settlement account held on the books of a Reserve Bank. The debit to the Federal Reserve account will be a final and irrevocable transaction. When all settlement debits have been covered and the arrangement's settlement account has been fully funded, credit settlement balances will be passed to the ABMS for posting to the relevant participants' Federal Reserve accounts. The credit entries will also be final and irrevocable transactions.

The ABMS account balance report available to institutions via Fedline will include a new line that will show the net settlement debit or credit entries that have been posted to the participants' Federal Reserve accounts. For purposes of measuring the daylight overdraft positions of participants, the net debit and net credit entries will be posted to participants' Federal Reserve accounts on a flow basis, as they are processed.

Exception Processing—If a settlement cannot be completed because a participant with a debit position is unable to cover its settlement obligation, the Federal Reserve will notify the participant and the agent for the clearing arrangement. The participant with the insufficient balance will be notified immediately. The agent will be notified on either an immediate or a delayed basis, depending on the notification option that the settlement arrangement has selected. If the clearinghouse chooses immediate notification, the Federal Reserve will automatically transmit a notification of the failed debit to the agent. If the deferred option is chosen, the Federal Reserve will defer notifying the agent for a brief interval after the participant's debit is rejected. This brief interval will be defined by the Federal Reserve, initially the interval will be approximately thirty to forty-five minutes long. The interval is intended to allow the participant some time to provide funding before the agent is notified. The length of the interval may be reviewed periodically based on perceived business needs. If the participant is unable to provide sufficient funds in its account before the end of the deferral interval, the Federal Reserve will automatically send a notification to the agent. When notified of the failed debit, the agent may choose to initiate actions to complete the settlement as determined by the rules of the clearing arrangement. Pending action by the agent, the settlement will remain open and the collected funds will remain in the settlement account. The enhanced service will provide settlement agents with the capability to:

1. Instruct the Federal Reserve to retry the failed debit. That is, the agent would notify Reserve Bank staff that the

participant in question has received the funds needed to fulfill its settlement obligation. The Federal Reserve would then retry debiting the participant's account and crediting the settlement account once more.

2. Fund the settlement account from an alternative source, such as a preestablished line of credit.

3. Instruct the Federal Reserve to cancel the settlement and allow the agent to submit a revised or ''recast'' settlement file that excludes the transactions of the participant in question and provides recalculated settlement positions for the remaining participants.

4. Instruct the Federal Reserve to cancel the settlement. If the agent selects this option, the funds in the settlement account will be returned to the Federal Reserve accounts of the debit participants that had covered their settlement obligations.

If processing of a settlement file has not been completed by the close of the settlement window because a participant is unable to cover its settlement obligation, the settlement will be cancelled by the Federal Reserve and all funds in the settlement account will be returned to the relevant participants. Extensions of the settlement window might be granted to accommodate operational disruptions or temporary funding problems. These occurrences, however, are expected to be rare and not to extend beyond the operating hours of the Fedwire funds transfer service.

Implementation and Conversion Schedule—Early in 1999, the Reserve Banks will conduct a pre-implementation pilot of the enhanced settlement service with two or three settlement arrangements. The pilot will be conducted in a test environment designed to simulate the production environment. The pilot will provide an opportunity for both Reserve Banks and participating arrangements to test the enhanced service and to refine operating procedures prior to implementation. The Reserve Banks will begin phased implementation of the enhanced settlement service on March 29, 1999.

The current Fedwire-based net settlement service used by a few national clearinghouses will continue to be offered in conjunction with the enhanced settlement service as long as a reasonable level of demand for the Fedwire-based service exists. The traditional settlement sheet service, however, will be phased out gradually. Clearinghouses and settlement arrangements that currently use the traditional net settlement service will be able to work with the Federal Reserve to develop a migration plan that is not in conflict with other critical efforts that the clearinghouses and participants may have under way. Specifically, because conversion to the enhanced settlement service may require clearinghouses to implement internal software changes, it may not be possible or desirable to address the required changes until after year 2000 system efforts have been completed. The Board expects that clearinghouses and settlement arrangements that currently use the traditional service will be able to convert to the enhanced settlement service by the end of 2001. The Board will consider extending the conversion deadline on a case-by-case basis for systems that can demonstrate significant resource demands due to other critical efforts.

Service Pricing—The planned price structure for the enhanced service has been designed to recognize both the fixed costs of providing a settlement service and the variable costs associated with the number of settlement transactions processed. This will be accomplished by assessing a charge for each settlement file transmitted by an arrangement and a charge for each settlement entry in the file. The actual price for the service will be announced in the fourth quarter of 1998 as part of the Federal Reserve's 1999 fee schedule.

IV. Summary of Comments

The Board received twenty public comment letters on its proposed enhanced settlement service.[5] The commenters included nine clearinghouse organizations and associations, six commercial banking organizations, four trade associations, and one retail payment network.

General Comments—Most commenters supported the proposed enhancements to the Federal Reserve's net settlement services. Over half of the commenters that supported the proposed service requested that the Board provide a pricing structure for the proposed service or specify the risk management policy to which institutions would be required to adhere in order to use this service. One commenter proposed that the Board convene a meeting of clearing arrangement operators to review these issues. On December 15, 1997, Federal Reserve staff held a meeting with private-sector organizations in order to answer questions and provide additional details regarding the enhanced settlement service. All organizations that submitted comment letters and other interested organizations were invited to the meeting.

A few commenters expressed concerns regarding the schedule for implementation of the proposed service. One commenter stated that if the Federal Reserve were going to require clearing and settlement arrangements to use the new service, then such a requirement should not be imposed on participants until after the year 2000. In light of the resources devoted to year 2000 issues, the Board will not require clearing and settlement arrangements to use the new service before the year 2000.

Issues Discussed at the December 15, 1997 Meeting—At the December meeting, Federal Reserve staff gave an overview of the proposed risk management policy that would apply to certain multilateral settlement systems regardless of whether they use Federal Reserve settlement services. A final policy was adopted by the Board in its *Policy Statement on Privately Operated Multilateral Settlement Systems* (63 FR 34888, June 26, 1998) and will become effective on January 4, 1999. In adopting that policy statement, the Board also emphasized that compliance with the policy does not require use of the Federal Reserve's enhanced settlement service. The planned pricing structure for the enhanced settlement service was also discussed with the private-sector representatives.

The Federal Reserve staff also briefly described pilot testing and the likely transition to the enhanced settlement service. As noted above, a pre-production pilot of the service will be conducted early in 1999. Phased implementation of the service will begin by the end of the first quarter of 1999.

One private-sector representative expressed concern regarding the proposed method of posting debits and credits to participants' Federal Reserve accounts on a flow basis, as they are processed, for purposes of measuring daylight overdraft positions. The representative felt that such a procedure would cause inequities among participants because participants would be debited or credited based on where the entry was located in the settlement file. The Board believes that, in most instances, debits and credits will be posted almost simultaneously, as soon as the settlement entries are processed. Delays in the posting of all debits and credits in a settlement file may occur if a participant is unable to cover its settlement obligation. These situations and the related consequences should be addressed in the clearinghouse rules.

[5] This total does not include comment letters from Federal Reserve Banks.

A few representatives wanted to know whether daylight overdrafts could be used to support a debit position by a settling participant. One of these representatives also requested clarification on how these debits and credits would affect a participant's daylight overdraft position. In general, a settling participant will normally be able to use its available account balance, which includes any authorized intraday credit, to fund its debit position. In addition, settlement debits and credits will be posted to the account of participants on a flow basis, as they occur.

Specific Issues on which the Board Sought Comment—The Board also sought comment on a number of other issues discussed below:

A. Continuation of Traditional Settlement Sheet Service With Next-Day Finality

Nine of the thirteen respondents to this question believed that the Federal Reserve should continue to offer its existing net settlement service with next-day finality. One commenter felt that the time and equipment investment necessary for the proposed service might prove to be a financial burden for small-volume clearinghouses. Two commenters indicated that some clearing arrangements might prefer the simplicity and low cost of the existing next-day finality service. Three commenters felt that the Federal Reserve should not continue to offer its existing net settlement service with next-day finality if the proposed service were offered. One of the commenters noted that ''there are no reasons, operational or otherwise, to allow ongoing and unnecessary temporal risk in the payments system as a result of next-day finality.''

The Board believes that the benefits to clearinghouse participants and the Federal Reserve provided by the enhanced service are significant. The enhanced service not only offers increased efficiency and security, but also significantly reduces settlement risk. The Board believes that the benefits of providing a more efficient and secure service that incorporates better risk controls outweigh the potential cost increase to the users of the traditional Federal Reserve net settlement service. In addition, it would not be cost effective to the Reserve Banks to continue to provide and support the current traditional settlement sheet service in addition to the enhanced service. As a result, the Board intends to phase out the traditional settlement sheet service with next-day finality. To be sensitive to the commenters' concerns regarding potential costs and resources that may have to be invested to convert to the enhanced service, the Board is adopting a flexible migration plan. Clearinghouses and their participants will have until the end of 2001 to convert to the enhanced service.

B. Continuation of the Fedwire-based Service

Nine of the fourteen commenters believed that the Federal Reserve should continue to offer the Fedwire-based net settlement service with same-day finality. One commenter felt that the Fedwire-based service provides greater opportunities for the settlement agent to manage the settlement actively and reduce the risk of a settlement failure.

Two commenters felt that the Federal Reserve should not continue to offer its Fedwire-based net settlement service because there would be no demand for this service with the introduction of the enhanced service. The commenters viewed the reduction in operational complexity from the Fedwire-based service as the justification for eliminating it.

The Board will continue to offer the Fedwire-based service as long as a reasonable level of demand for the service exists. The Fedwire-based service has robust risk management features. Because finality is granted when the settlement entries are posted via the use of Fedwire funds transfers, the Fedwire-based service also reduces settlement risk to private-sector participants.

C. Length of Settlement Window and Provision of a Warehousing Mechanism

There was no consensus among respondents as to whether the period between 8:30 a.m. and 4:00 p.m. ET would be adequate to support current and future needs of potential users of the service. Two commenters expressed a preference for the service to begin processing settlement files during the very early morning hours, with 12:30 a.m. suggested by one of the commenters. Two other commenters felt that, at a minimum, a 6:00 p.m. ET closing deadline should be implemented.

The Board recognizes that the Fedwire funds transfer service is the primary alternative for orderly and efficient settlement of bilateral obligations in case a settlement arrangement is unable to complete its multilateral settlement through the enhanced service. As a result, the Board has determined that settlement file processing should generally be completed before 6:00 p.m. to allow at least a thirty minute period before the standard close of the Fedwire funds transfer system. To ensure that processing of the settlement files is completed by the close of the settlement window, the Federal Reserve will establish a cut-off time for submission of settlement files that is approximately thirty to sixty minutes in advance of the settlement window deadline. Extensions of the settlement deadlines may be permitted under extenuating circumstances. Experience gained during the pilot period will be used to review and, if necessary, redefine settlement deadlines. At this time, the Board does not believe that a compelling business need has been expressed to start processing settlement files before 8:30 a.m. ET. This issue may be reviewed as experience is gained with the operation of the enhanced service.

With respect to the warehousing option, seven of the eleven commenters felt that this feature should be offered. One commenter claimed that settlement files should be received in a ''flow processing mode'' twenty-four hours a day, seven days a week. Four commenters did not support a warehousing option because they thought such an option would not be useful or thought warehousing should be handled by the clearing association's settlement agent rather than the Federal Reserve.

The enhanced settlement service will queue settlement files received after the close of the settlement window for processing at the opening of the following day's settlement window, provided the settlement date on the file corresponds with the following business date. More sophisticated warehousing capabilities will not be offered in the initial release due to cost and time constraints.

D. Submission of Settlement Data Through an Electronic Mechanism

All but one of the fifteen commenters that responded to this question felt it would be reasonable to require clearing arrangements or settlement agents to use an electronic mechanism to submit settlement data. The commenters felt that such an electronic mechanism would ensure that data are sent and received by authorized persons and not tampered with during transmission. One commenter, while agreeing that electronic devices should be used, recommended that the Federal Reserve be able to receive valid settlement data and enter the data manually into the settlement system in emergencies. One commenter did not believe that it would be reasonable to require the electronic

submission of data and encouraged the Federal Reserve to offer a manual procedure for submitting data.

The Board shares the concerns of the commenters and will provide an electronic mechanism for settlement data transmission to increase the efficiency and security of the settlement process. Settlement files may be transmitted via a standard Fedline terminal or a computer interface bulk data connection. Preformatted Fedline screens for settlement data input will also be provided.

Clearing and settlement systems are encouraged to have contingency arrangements to reduce the risk of a failed settlement resulting from operational problems. The Reserve Banks will be able to accept and process non-electronic files on behalf of a settlement agent in situations in which an arrangement is experiencing severe operational disruptions and is unable to access the enhanced service directly or through its contingency channels.

E. Providing Monitoring Capabilities to the Agent

All but one of the fourteen commenters that responded to this question felt it would be appropriate to offer a monitoring capability that would allow the settlement agent to determine whether settlement entries for individual participants had been successfully posted. One commenter felt that this service should be offered to settlement agents because they represent their member financial institutions as unbiased facilitators in all aspects of the settlement process. Another commenter believed that the settlement agent must have access to information that will allow it to determine whether individual participants have fulfilled their settlement obligations.

The enhanced service will provide the agent with the capability to view the settlement account balance by using the ABMS. Automated inquiries for monitoring the progress and the status of a settlement file by the agent will be provided in a later release of the application.

F. Value-added Services That Provide Non-settling Participant Information

Eight of the ten respondents to this question did not believe that the Federal Reserve should offer a value-added service that would provide non-settling participant information. The general consensus was that such services are more appropriate for the settlement agent to offer to its participants. One commenter stated that it does not see a need for the Federal Reserve to provide these services, as the settlement agent would have this information in order to calculate the settling participant's aggregate position. The settlement agent should, therefore, be able to communicate this information to the settling participants and any non-settling participants. Two commenters felt that the value-added services should be offered by the Federal Reserve because such information would be of assistance to settling and non-settling participants in analyzing their daily obligations.

The Board agrees that, in most cases, the agent can provide the non-settling participant information more efficiently. As a result, the enhanced service will not include these value-added features in the near term.

G. Provision of a Retry Feature

The fourteen respondents that addressed this issue felt that a retry feature should be included in the proposed net settlement service. Eight of these respondents believed that the service should include a retry feature that automatically attempts to debit the account of a participant following a predefined interval after the participant fails to cover its debit obligation. The respondents also requested a retry feature that could be controlled by the agent. Four respondents felt that only an automatic retry feature should be available, whereas two others felt that only a retry feature that can be controlled by the agent should be offered. A proponent of the controlled retry feature claimed that such a system would provide the greatest flexibility and maximum operational effectiveness because a retry would be attempted only when the settlement agent felt that the settlement was likely to succeed.

A retry feature will be available in the enhanced settlement service. In cases where an arrangement has selected the deferred notification option, the Federal Reserve will retry the failed debit after a predefined interval before the Federal Reserve notifies the agent that a participant is unable to cover the debit. Once the agent has been notified, it will be able to instruct the Federal Reserve to retry a debit entry to a participant's account. Further automation of the retry function may be included in a future release of the application software.

H. Length of the Retry Window and Maximum Number of Retries

There was no consensus among the thirteen respondents that commented on this question as to how long the retry window should be. Four commenters suggested a period of anywhere from one hour up to three hours. One commenter felt that the retry capability should have no time limits other than being restricted to the operating hours of the net settlement service. Two others believed that the retry window time limit should be left to the discretion of the clearing arrangements.

In the event that a settlement account cannot be fully funded because the initial attempt to post a settlement debit to a participant's account has failed, the Federal Reserve may retry the debit after a short predefined interval. The interval is likely to be approximately thirty to forty-five minutes after the failed debit occurred. If the debit continues to remain unfunded, the agent will automatically be notified. A relatively short interval to retry a debit will give the agent as much time as possible to take alternative action to avoid unnecessary settlement failures if the retry fails. The length of the interval will be reviewed periodically based on perceived business needs. Further, retry instructions from settlement agents will be honored at any time during which the settlement service is open.

There was no consensus among the respondents as to the maximum number of retries that should be allowed. Five respondents stated that there should be a limited number of attempts but did not specify a number. Two commenters felt that a maximum of two retries should be made. Two commenters believed that the maximum number of retries allowed should be decided by the clearing arrangements.

If the clearing arrangement chooses the delayed notification option, the Federal Reserve will automatically retry the debit once following a short interval after the initial debit failed. The Federal Reserve will review periodically after the initial release whether, for clearing arrangements choosing the delayed notification option, the service should provide more than one automated retry following an initial failure to post a settlement debit. The Board has imposed no formal limit on the number of times that a settlement agent can request that a failed debit be retried.

I. Legal Status of the Debit and Credit Settlement Entries

Of the eleven commenters that responded to this question, seven believed that the debit and credit entries to the Federal Reserve accounts of the settling participants should not be considered funds transfers under Regulation J (12 CFR part 210) and other laws applicable to funds transfers. One respondent stated that the proposed service does not use Fedwire funds transfers and thus cannot rely on the same legal basis. Many suggested that the Federal Reserve amend Regulation J

to address the status of the entries posted by the enhanced settlement service. One commenter suggested that debit and credit entries to the reserve accounts of the settling participants be considered funds transfers under Regulation J and pertinent sections of Article 4A of the Uniform Commercial Code. Another felt that although Regulation J did not apply to the debit and credit entries of the proposed service, Article 4A did apply.

The Board has not amended Regulation J to cover explicitly debit and credit entries associated with the enhanced settlement service. Although certain provisions of Article 4A may apply to the debit and credit entries, the extent to which these entries would be considered ''payment orders'' under Article 4A is not clear. Therefore, the Reserve Bank operating circulars will establish the rules governing the debit and credit entries to the Federal Reserve accounts of the settling participants, including when those debits and credits will become final.

J. Capability to Transfer Funds Into the Settlement Account

All but one of the twelve commenters that responded to this question indicated that it would be beneficial for the service to provide the capability for a participant or another institution to transfer additional funds into the settlement account in order to complete the settlement. One commenter stated that such a feature could facilitate quick resolution of problems and prevent temporary problems from becoming permanent defaults.

Only one commenter thought that the Federal Reserve should not offer the capability for another participant or depository institution to transfer funds into the settlement account to complete the settlement process. This commenter stated that a failed debit for a settling participant should be resolved by that participant and that the settling participants can set up bilateral funding arrangements if they so choose.

The enhanced settlement service will allow another settling participant or depository institution to transfer additional funds into the settlement account in order to complete the settlement. The agent or another authorized depository institution will be able to transfer funds into the settlement account to complete settlement in accordance with the clearinghouse association rules.

K. Clearing Arrangements That Should be Eligible for the Enhanced Settlement Service

Seven out of the twelve respondents that addressed this issue felt that the Federal Reserve should offer the proposed service to any type of clearing arrangement. Three of these commenters wanted to clarify that direct settlement participants would have to be entities that are eligible for Federal Reserve accounts. Another commenter stated that the proposed service should ''accommodate any type of clearing arrangement'' because of the rapidly changing payment systems environment and the increasing need for new services in the industry.

Two commenters believed that the proposed service should be available only to small-dollar clearing arrangements. One of these respondents felt that large-dollar clearing arrangements, such as CHIPS, should not have access to the new service because the settlement agents should have a very active role in managing the settlements for large-dollar systems, and the Fedwire-based settlement is best suited for these purposes.

The Board is confident that the enhanced service offers an efficient and secure settlement service with strong risk management features. As a result, the Federal Reserve will make the enhanced settlement service available to financial institutions with Federal Reserve accounts that participate in multilateral settlements for private-sector clearing arrangements.

V. Competitive Impact Analysis

The Board has established procedures for assessing the competitive impact of rule or policy changes that have a substantial impact on payments system participants.[6] Under these procedures, the Board will assess whether a change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve deriving from such differences. If no reasonable modifications would mitigate the adverse competitive effects, the Board will determine whether the expected benefits are significant enough to proceed with the change despite the adverse effects.

The Board's proposed enhancements to the net settlement service are intended to improve the clearance and settlement process for payments by increasing the efficiency of the services currently offered by the Federal Reserve and by reducing the uncertainty and disruption to private-sector participants from the potential reversal of settlement on the following business day. From this standpoint, the enhanced settlement service should help reduce risk as well as operational burden for private-sector settlement arrangements. In addition, risk controls that would be developed in order to provide finality of settlements to clearinghouse participants on the settlement date would help protect the Federal Reserve from the risk of loss. As a result, the Board believes that the proposed enhancements to the Federal Reserve's net settlement services would enable depository institutions to continue to take advantage of the benefits of netting, while increasing operational efficiency and reducing credit risk to the private sector.

By order of the Board of Governors of the Federal Reserve System, November 2, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–29709 Filed 11–5–98; 8:45 am]

BILLING CODE 6210–01–P

[6] These procedures are described in the Board's policy statement ''The Federal Reserve in the Payments System,'' as revised March 1990. (55 FR 11648, March 29, 1990).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry; Senior Executive Service; Performance Review Board Members

AGENCY: Centers for Disease Control and Prevention (CDC), and Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: Title 5, U.S. Code, Section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that appointment of Performance Review Board members be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Connie Clayton, Human Resources Management Office, Office of Program Support, Centers for Disease Control and Prevention, 4770 Buford Highway, Mailstop K–07, Atlanta, Georgia 30341–3724, telephone 770–488–1874.

SUPPLEMENTARY INFORMATION: The following persons will serve on the Performance Review Board which

oversees the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services in the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry:

Claire V. Broome, M.D., Chairperson
Stephen B. Blount, M.D., M.P.H.
James M. Hughes, M.D.
Arthur C. Jackson
Richard J. Jackson, M.D., M.P.H.
James S. Marks, M.D., M.P.H.
Peter J. McCumiskey
Linda Rosenstock, M.D., M.P.H.
Stephen B. Thacker, M.D.

Dated: November 3, 1998.

Claire V. Broome,

Deputy Director, Centers for Disease Control and Prevention (CDC) and Deputy Administrator, Agency for Toxic Substances and Disease Registry (ATSDR).

[FR Doc. 98–29736 Filed 11–5–98; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–02]

Proposed Data Collections Submitted for Public Comment and Recommendations

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 Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

1. Proposed Project. 2000 National Health Interview Survey, Basic Module (0920–0214)—Revision—The National Center for Health Statistics. The annual National Health Interview Survey (NHIS) is a basic source of general statistics on the health of the U.S. population. Due to the integration of health surveys in the Department of Health and Human Services, the NHIS also has become the sampling frame and first stage of data collection for other major surveys, including the Medical Expenditure Panel Survey, the National Survey of Family Growth, and the National Health and Nutrition Examination Survey. By linking to the NHIS, the analysis potential of these surveys increases. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data for the Congressionally-mandated ''Health US'' and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, ''Healthy People 2000.''

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign of the annual core questionnaire, or Basic Module, and a redesign of the data collection system from paper questionnaires to computer assisted personal interviews (CAPI). Those redesigned elements were implemented in 1997 and are expected to be in the field until 2006. Ad hoc Topical Modules on various health issues are provided for in the redesigned NHIS. This clearance is for the fourth full year of data collection, planned for January-December 2000. The Basic Module on CAPI will result in publication of new national estimates of health statistics, release of public use micro data files, and a sampling frame for other integrated surveys. It will also include a ''Topical Module'' (or supplement) on Cancer. The cancer module will repeat similar surveys conducted in 1987 and 1992, and will help track many of the Healthy People 2000 Objectives for cancer.

At a rate of $15 per hour, the total cost to respondents is estimated at $1,062,900 for the whole survey.

Respondents	Number of Respondents	Number of Responses/Respondent	Avg. Burden/per Response (in hrs.)	Total Burden (in hrs.)
Family	42,000	1	0.5	21,000
Sample adult	42,000	1	1.08	45,360
Sample child	18,000	1	0.25	4,500
Total	.....	.....	.....	70,860

2. Validation of Self-reported Health Outcomes from the Health Assessment of Persian Gulf War Veterans From Iowa: Follow-up on Asthma—(0920–0425)—Extension—The National Center for Environmental Health—The purpose of this study is to collect additional data to validate health outcomes reported by participants in the Health Assessment of Persian Gulf War Veterans from Iowa. The original data collection consisted of a telephone survey of 3,695 military personnel who served during the time of the Persian Gulf War and listed Iowa as their home of residence. Data will be collected from subjects who participated in the telephone survey to validate the self-report of asthma. Lung function assessment, tests of airways hyperactivity, and standard respiratory health questionnaires will be administered. Review of medical records, standard physical examination, and laboratory evaluation will be conducted to validate multi systemic conditions, including chronic fatigue syndrome and fibromyalgia. The total cost to the respondents is $0.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden per response (in hrs)	Total burden (in hrs.)
PGW Exposed and Non-PGW Veterans self-reporting asthma. Questionnaire (ATS and Adult Respiratory Health); Pulmonary Function Tests (spirometry, DLCO, lung volumes); Histamine Challenge.	50	1	2.25	112.5
Normal Controls. (PGW/Non-PGW Vets denying symptoms of asthma). Questionnaire (ATS and Adult Respiratory Health); Pulmonary Function Tests (spirometry, DLCO, lung volumes); Histamine Challenge	50	1	2.25	112.5
Total				225

Dated: October 29, 1998.

Kathy Cahill,

Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 98–29733 Filed 11–5–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Energy-Related Epidemiologic Research and Subcommittee for Community Affairs Meetings Notice; Correction

SUMMARY: The Centers for Disease Control and Prevention published a document in the **Federal Register**, Volume 63, Number 212, Page 59315, on November 3, 1998, announcing meetings of the Advisory Committee for Energy-Related Epidemiologic Research (ACERER) and the Subcommittee for Community Affairs meetings. The document contained incorrect dates. Please note the correct dates as follows:

Name: Advisory Committee for Energy-Related Epidemiologic Research.

Time and Date: 8:30 a.m.–5:15 p.m., November 19, 1998.

Name: ACERER Subcommittee for Community Affairs.

Time and Date: 8:30 a.m.–5 p.m., November 20, 1998.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Sage, Deputy Chief, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE (F–35), Atlanta, Georgia 30341–3724, telephone 770/488–7040, fax 770/488–7044.

Dated: November 2, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–29900 Filed 11–4–98; 11:44 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Information Collection for the Welfare to Work Data Collection Requirements.

OMB No.: New.

Description: The Balanced Budget Act of 1997, Pub. L. 105–33, amended title IV–A of the Social Security Act (the Act) to add the Welfare-to-Work (WtW) program. Section 411 of the Act specifies the WtW participant data collection and reporting requirements that must be submitted by those States and Indian tribes administering a WtW program. This information will be used in the evaluation that Section 413(j) of the Act requires DHHS to report to Congress in January 1999 and in January 2001.

Respondents: State, Local or Tribal Govt.

Annual Burden Estimates

Instrument	Number of Respondents	Number of Responses per Respondent	Average Burden Hours per Response	Total Burden Hours
WtW	61	4	164	40,016
ACF–198&343	61	4	248	60,512
Estimated Total Annual Burden Hours				100,528

Additional Information

ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by November 13, 1998. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Bob Sargis at (202) 690–7275.

Comments and questions about the information collection described above should be directed to the following address by November 13, 1998: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Dated: November 2, 1998.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 98–29711 Filed 11–5–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0924]

Medical Devices Containing Materials Derived From Animal Sources (Except for In Vitro Diagnostic Devices), Guidance for FDA Reviewers and Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Medical Devices Containing Materials Derived From Animal Sources (Except for In Vitro Diagnostic Devices), Guidance for FDA Reviewers and Industry.'' This guidance is intended to provide recommendations for information that is to be included in premarket submissions—investigational device exemption (IDE), premarket approval application (PMA), and 510(k) submisions for medical devices that either contain or are exposed to animal-derived materials during manufacturing.

DATES: Written comments concerning this guidance must be received by February 4, 1999. Comments submitted after February 4, 1999, must be submitted to one of the contact persons.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Medical Devices Containing Materials Derived From Animal Sources (Except for In Vitro Diagnostic Devices), Guidance for FDA Reviewers and Industry'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Written comments concerning this guidance must be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Karen F. Warburton, Office of Device Evaluation (HFZ–460), or Kiki B. Hellman, Office of Science and Technology (HFZ–113), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–7158.

SUPPLEMENTARY INFORMATION:

I. Background

FDA believes that an animal disease such as bovine spongiform encephalopathy (BSE) is a concern in the manufacture of FDA-regulated products intended for administration to humans. In 1993 and, more recently, on May 6, 1996, FDA issued letters to manufacturers to request that bovine-derived materials from cattle which have resided in or originated from countries where BSE has been diagnosed (as designated by the U.S. Department of Agriculture) not be used in the manufacture of FDA-regulated products. To identify medical devices which either contain or are exposed to animal-derived materials during manufacturing, CDRH developed the biomaterials database that contains an inventory of these devices, including type of material, animal species and county of origin, and target organ or tissue for each device. Originally proposed in response to the BSE issue, the database was expanded to include all animal-derived products (including human) in order to respond to other animal-based sourcing concerns that may arise in the future.

II. Significance of Guidance

This guidance document represents the agency's current thinking on medical devices containing materials derived from animal sources. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's) which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's. The agency is accepting public comments, but it is implementing this guidance immediately because of public health concerns related to the use of bovine-derived materials in medical devices and the agency's previous communication to manufacturers on this subject.

III. Electronic Access

In order to receive ''Medical Devices Containing Materials Derived From Animal Sources (Except for In Vitro Diagnostic Devices), Guidance for FDA Reviewers and Industry'' via your fax machine, call the CDRH Facts–On–Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (2206) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes ''Medical Devices Containing Materials Derived From Animal Sources (Except In Vitro Diagnostic Devices), Guidance for FDA Reviewers and Industry,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. ''Medical Devices Containing Materials Derived From Animal Sources (Except for In Vitro Diagnostic Devices), Guidance for FDA Reviewers and Industry'' will be available at http://www.fda.gov/cdrh/ode/guid.html.

IV. Comments

Interested persons may, on or before February 4, 1999, submit to Dockets Management Branch (address above) written comments regarding this immediately in effect guidance. At any time after 90 days from the date of publication in the **Federal Register**, submit to the contact person (address above) written comments regarding this guidance. Such comments will be considered when determining whether to amend the current guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 28, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–29750 Filed 11–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0896]

Guidances for the Medical Device Industry on PMA Shell Development and Modular Review; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Guidances for the Medical Device Industry on PMA Shell Development and Modular Review.'' This guidance describes a new program for the submission and review of premarket approval applications (PMA's) in a modular format, termed the ''PMA Shell.'' FDA is issuing this document as part of its commitment to improve the PMA development and review processes.

DATES: Written comments concerning this guidance must be received by February 4, 1999.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Guidances for the Medical Device Industry on PMA Shell Development and Modular Review'' (on a 3.5'' diskette) to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments on this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ashley A. Boulware or Kathy M. Poneleit, Center for Devices and Radiological Health (HFZ–460 or HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053 or 301–594–2186.

SUPPLEMENTARY INFORMATION:

I. Background

Despite a marked improvement in device approval times, FDA's Center for Devices and Radiological health (CDRH) is committed to substantial improvement of the PMA development and review processes. Often FDA's involvement with the product has been greatest during review of the PMA, which is at the end of the process. This new program involves the development of a plan for modular submission, termed the ''PMA Shell,'' and the submission of sections of the PMA, termed modules, to increase early and effective interactions with applicants.

The essence of the modular concept for data development, submission, review, and closure is to break the contents of a PMA into well delineated components (modules) that can be submitted over time; this is expected to be particularly applicable to the preclinical information as the clinical data are being developed. The PMA Shell is a document that is proposed by the potential PMA applicant and agreed to by CDRH. The PMA Shell is used to identify the proposed modules and the proposed contents for each module. The PMA Shell allows CDRH to prospectively determine whether each proposed module will be appropriate as a document that can be reviewed separately from other information needed to evaluate the PMA. For example, the toxicology data may be appropriate as a module, whereas labeling may not be appropriate as a module independent of the clinical study data. Modules will be submitted to CDRH for review. Once they are complete and acceptable to FDA, modules will not generally be reevaluated unless a significant safety and effectiveness issue later develops that bears on the previously reviewed module.

Through increased interaction with applicants and earlier review of data and analyses, CDRH expects this program to increase the efficiency of PMA review by reviewing and bringing to closure modules nearer to when the data are developed and when the corporate staff who developed the data should most easily be able to respond to any need for clarification of the reports.

II. Significance of Guidance

This guidance document represents the agency's current thinking on improving the PMA process. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfied the applicable statute, regulations, or both.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Comments

Interested persons may, on or before February 4, 1999, submit to the Dockets Management Branch (address above) written comments regarding this guidance. After February 4, 1999, submit written comments regarding this guidance to the contact persons (address above). Such comments will be considered when determining whether to amend the current guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

In order to receive ''Guidances for the Medical Device Industry on PMA Shell Development and Modular Review'' via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (835) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes ''Guidances for the Medical Device Industry on PMA Shell Development and Modular Review,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information.

The CDRH home page may be accessed at ''http://www.fed.gov/cdrh''. ''Guidances for the Medical Device Industry on PMA Shell Development and Modular Review'' will be available at ''http://www.fda.gov/cdrh/ode''.

Dated: October 28, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health

[FR Doc. 98–29752 Filed 11–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–34]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Mr. Jeff Holste, U.S. Army Corps of Engineers, Installation Support Center, 7701 Telegraph Road, Alexandria, VA 22315; (703) 428–6318; (these are not toll-free numbers).

Dated: October 29, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 11/06/98

Unsuitable Properties

Building (by State)

Alabama

Bldg. S162
Anniston Army Depot
Anniston AL 36201–
Landholding Agency: Army
Property Number: 21984001
Status: Unutilized
Reason: Extensive deterioration

Bldg. S179
Anniston Army Depot
Anniston AL 36201–
Landholding Agency: Army
Property Number: 219840002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 217
Anniston Army Depot
Anniston AL 36201–
Landholding Agency: Army
Property Number: 21984003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 609
Anniston Army Depot
Anniston AL 362091–
Landholding Agency: Army
Property Number: 21984004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 610
Anniston Army Depot
Anniston AL 36201–
Landholding Agency: Army
Property Number: 219840005
Status: Unutilized
Reason: Extensive deterioration

7 Bldgs.
Fort Rucker
#6007–6011, 6013–6014
Ft. Rucker Co: Dale Al 36362–
Landholding Agency: Army
Property Number: 219840006
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Fort Rucker
#24501, 30306, 30309, 30310
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 219840007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3309
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 219840008
Status: Unutilized
Reason: Secured Area

Bldg. 3525
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 219840009
Status: Unutilized
Reason: Secured Area

Bldg. 5673
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 219840010
Status: Unutilized
Reason: Secured Area

Bldg. 7569
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 219840011
Status: Unutilized
Reason: Secured Area Extensive deterioration

Bldg. 7669
Redstone Arsenal;
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 219840012
Status: Unutilized
Reason: Secured Area Extensive deterioration

Bldg. 8978
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 219840013
Status: Unutilized
Reason: Secured Area

California

Bldg. 127
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219840015
Status: Unutilized
Reason: Secured Area

Bldg. 191
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219840016
Status: Unutilized
Reason: Secured Area

Bldg. 192
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219840017
Status: Unutilized
Reason: Secured Area

Bldg. 193
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219840018
Status: Unutilized
Reason: Secured Area

Bldg. 194
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219840019
Status: Unutilized
Reason: Secured Area

Bldg. 195
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219840020
Status: Unutilized
Reason: Secured Area

Bldg. 560
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219840021
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 561
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 219840022
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Hawaii

Bldg. T–1088
Schofield Barracks Military Reservation
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219840023
Status: Unutilized
Reason: Extensive deterioration

Bldg. T–1092
Schofield Barracks Military Reservation
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219840024
Status: Unutilized
Reason: Extensive deterioration

Kentucky

Bldg. T00737
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219840025
Status: Unutilized
Reason: Extensive deterioration

Bldg. T00760
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219840026
Status: Unutilized
Reason: Extensive deterioration

Bldg. T02322
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219840027
Status: Unutilized
Reason: Extensive deterioration

Bldg. T02327
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219840028
Status: Unutilized
Reason: Extensive deterioration

Bldg. T02423
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219840029
Status: Unutilized
Reason: Extensive deterioration

Bldg. T02901
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219840030
Status: Unutilized
Reason: Extensive deterioration

Bldg. T03106
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219840031
Status: Unutilized
Reason: Extensive deterioration

Bldg. T03107
Fort Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219840032
Status: Unutilized
Reason: Extensive deterioration

Louisiana

Bldg. 3704
Fort Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219840033
Status: Unutilized
Reason: Floodway

Bldg. 3707
Fort Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219840034
Status: Unutilized
Reason: Floodway

Bldg. 3708
Fort Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219840035
Status: Unutilized
Reason: Floodway

Bldg. 3709
Fort Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219840036
Status: Unutilized
Reason: Floodway

Bldg. 3710
Fort Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219840037
Status: Unutilized
Reason: Floodway

Bldg. 3713
Fort Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219840038
Status: Unutilized
Reason: Floodway

Bldg. 3714
Fort Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219840039
Status: Unutilized
Reason: Floodway

Bldg. 3715
Fort Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219840040
Status: Unutilized
Reason: Floodway

Bldg. 3719
Fort Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219840041
Status: Unutilized
Reason: Floodway

Bldg. 3720
Fort Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219840042
Status: Unutilized
Reason: Floodway

Bldg. 3721
Fort Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219840043
Status: Unutilized
Reason: Floodway

Bldg. 3722
Fort Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219840044
Status: Unutilized
Reason: Floodway

Bldg. 5931
Fort Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219840045
Status: Unutilized
Reason: Floodway

Bldg. 6181
Fort Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219840046
Status: Unutilized
Reason: Floodway, Extensive deterioration

Bldg. 6250
Fort Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219840047
Status: Unutilized
Reason: Floodway Extensive deterioration

Maryland

Bldg. TM1
Fort George G. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219840048
Status: Unutilized
Reason: Within airport runway clear zone Secured Area Extensive deterioration

Bldg. TM2
Fort George G. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219840049
Status: Unutilized
Reason: Within airport runway clear zone Secured Area Extensive deterioration

Bldg. TM3
Fort George G. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219840050
Status: Unutilized
Reason: Within airport runway clear zone Secured Area Extensive deterioration

Bldg. TM6
Fort George G. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219840051
Status: Unutilized
Reason: Within airport runway clear zone Secured Area Extensive deterioration

Bldg. TM7
Fort George G. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219840052
Status: Unutilized
Reason: Within airport runway clear zone Secured Area Extensive deterioration

Bldg. TM10
Fort George G. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219840053
Status: Unutilized
Reason: Within airport runway clear zone Secured Area Extensive deterioration

Bldg. TM11
Fort George G. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219840054
Status: Unutilized
Reason: Within airport runway clear zone Secured Area Extensive deterioration

Bldg. TM12
Fort George G. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 219840055
Status: Unutilized
Reason: Within airport runway clear zone Secured Area Extensive deterioration

Bldgs. 02515–02521
Aberdeen Proving Ground Co: Harford Md 21005–5001
Landholding Agency: Army
Property Number: 219840056
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00651
Aberdeen Proving Ground Co: Harford Md 21005–5001
Landholding Agency: Army
Property Number: 219840057
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1090
Aberdeen Proving Ground Co: Harford Md 21005–5001
Landholding Agency: Army
Property Number: 219840058
Status: Unutilized
Reason: Extensive deterioration

Bldg. 05444
Aberdeen Proving Ground Co: Harford Md 21005–5001
Landholding Agency: Army
Property Number: 219840059
Status: Unutilized
Reason: Extensive deterioration

Minnesota

Bldgs. 117A & 117B
Twin Cities Army Ammunition Plant
Arden Hills Co: Ramsey MN 55112–3928
Landholding Agency: Army
Property Number: 219840060
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

New Mexico

Bldg. 20200
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219840061
Status: Unutilized
Reason: Extensive deterioration

Bldg. 20300
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219840062
Status: Unutilized
Reason: Extensive deterioration

Bldg. 20452
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219840063
Status: Unutilized
Reason: Extensive deterioration

Bldg. 23102
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219840064
Status: Unutilized
Reason: Extensive deterioration

Bldg. 23104
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219840065
Status: Unutilized
Reason: Extensive deterioration

Bldg. 23114
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219840066
Status: Unutilized
Reason: Extensive deterioration

Bldg. 32795
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 219840067
Status: Unutilized
Reason: Extensive deterioration

New York

Bldg. 134
Watervliet Arsenal
Watervliet Co: Albany NY 12189–4050
Landholding Agency: Army
Property Number: 219840068
Status: Unutilized
Reason: Secured Area

Ohio

Bldg. S3403
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840069
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. S3401
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840070
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. S4452
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840071
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. FJ904
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840072
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. S4513
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840073
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Areas

Bldg. IWT01
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840074
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldgs. DC001, DB27B
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840075
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 0251A
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840076
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldgs. DB008, DB08A, DB022
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840077
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. DB002
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840078
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. DB019
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840079
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 00251
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840080
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

6 Bldgs.
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Location: #DA005, DA007, DB009, DB09A, DB011, DA021
Landholding Agency: Army
Property Number: 219840081
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

29 Bldgs.
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Location: #DB003, DB004, DB04A/N/S, DB04V, DB4AN, DB4AS, 22635, DB4AV, DA006, DA06A, DB010, DB10B, DB10C, DB013, DB13A/B, DB020, DB025–27, DB27A/C, DA028/28A, DB029–DB030, DB802
Landholding Agency: Army
Property Number: 219840082
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

24 Bldgs.
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Location: #EB003, EB004, EB04A/N/S, EB04V, EB4AN, EB4AS, EB4AV, EA006, EA06A, EB010, EB10A/B/C, EB013, EB13A/B, EB020, EB025, EB026, EA028, EA28A, EB803
Landholding Agency: Army
Property Number: 219840083
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 00351
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840084
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 00351A
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840085
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. EB019
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840086
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. EB002
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840087
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldgs. EB008, EB08A, EB022
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840088
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

6 Bldgs.
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Location: #EA005, EA007, EB009, EB09A, EB011, EA021
Landholding Agency: Army
Property Number: 219840089
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

4 Bldgs.
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Location: #55701, 53201, 53001, 54101
Landholding Agency: Army
Property Number: 219840090
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldgs. 54301, 55301
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840091
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 0251A
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840092
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

26 Bldgs.
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Location: #CB025, CB13B/A, CB013, CB10D/C/B, CB010, CB04V, CB04S, CB4AV, CB04N/B/A, CB004, CB4AS, CB4AN, CB002, CB003, CA28A, CA014, CA06A, CA006, CA06V, CA6AV, 22640
Landholding Agency: Army
Property Number: 219840093
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. F0015
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840094
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 1032
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840095
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

5 Bldgs.
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297

Location: #CB008, CB023, CB012, CB022, CA015
Landholding Agency: Army
Property Number: 219840096
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldgs. CB026, CB801, CB020
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840097
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldgs. 54801, CC001
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840098
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldgs. 0151A, 00151
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840099
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. CB19
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840100
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

8 Bldgs.
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Location: #CA007, CA005, CA017, CA028, CB009, CA021, CB011, CB016
Landholding Agency: Army
Property Number: 219840101
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. SD002
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840102
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. S3410
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840103
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. WW001
Ravenna Army Ammunition Plant Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 219840104
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 99
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 219840105
Status: Unutilized
Reason: Secured Area

Bldg. 100
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 219840106
Status: Unutilized
Reason: Secured Area

Oregon

Bldg. 116
Umatilla Chemical Depot Co: Umatilla OR 98738–
Landholding Agency: Army
Property Number: 219840107
Status: Unutilized
Reason: Secured Area

Bldgs. 122, 123, 125
Umatilla Chemical Depot Co: Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219840108
Status: Unutilized
Reason: Secured Area

Bldgs. 202, 204, 205
Umatilla Chemical Depot Co: Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219840109
Status: Unutilized
Reason: Secured Area

Bldg. 346
Umatilla Chemical Depot Co: Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219840110
Status: Unutilized
Reason: Secured Area

Pennsylvania

Bldgs. 1017, 1018, 1019
Tobyhanna Army Depot Co: Monroe PA 18466–
Landholding Agency: Army
Property Number: 219840111
Status: Unutilized
Reason: Extensive deterioration

Tennessee

Bldg. 205
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN
Landholding Agency: Army
Property Number: 219840112
Status: Unutilized
Reason: Extensive deterioration

Virginia

Bldgs. 405, 771
Fort Story Ft. Story VA 23459–5000
Landholding Agency: Army
Property Number: 219840114
Status: Unutilized
Reason: Extensive deterioration

12 Bldgs.
Fort Eustis
Ft. Eustis VA 23604–
Location: #203–204, 924, 1510, 1514–1515, 1521–1523, 1526, 1528–1529
Landholding Agency: Army
Property Number: 219840115
Status: Unutilized
Reason: Extensive deterioration

14 Bldgs.
Fort Eustis
Ft. Eustis VA 23604–
Location: #1532, 1534, 1538–1539, 1545, 1553–1554, 1562, 1564, 1569, 1702, 1706, 1708, 1710
Landholding Agency: Army
Property Number: 219840116
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1561, 1568
Fort Eustis
Ft. Eustis VA 23604–
Property Number: 219840117
Status: Unutilized
Reason: Extensive deterioration

Washington

Bldg. 4550
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219840118
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4551
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219840119
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4558
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219840120
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4559
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219840121
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4560
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219840122
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4561
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219840123
Status: Unutilized
Reason: Extensive deterioration

Land (by State)

Texas

5.2 Acres
Fort Sam Houston
Off Winans Road
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219840113
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

[FR Doc. 98–29444 Filed 11–5–98; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Proposed Extension of Information Collection; Comment Request

AGENCY: Office of American Indian Trust, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Department of the Interior is requesting comments on information collection, ''Evaluation of the Performance of Trust Functions Performed by Tribes under Self Governance Compacts'' currently cleared under OMB Number 1076–0146. This extension request seeks public comment as required by regulation at 5 CFR 1320.5(a)(1)(iv).

Specifically, the Department of the Interior invites comments by the public on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have a practical use; the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, usefulness, and clarity of the information to be collected; and minimizing the burden of collection on those who are to respond.

DATES: Written comments on this collection of information will be accepted on or before January 5, 1999.

ADDRESSES: Further information may be secured from, and comments should be sent to: United States Department of the Interior, Office of American Indian Trust, 1849 C Street, NW, MS 2472 MIB, Washington, DC, Attention Elizabeth Lohah Homer, Director.

SUPPLEMENTARY INFORMATION:

Respondents: For the 1998 funding year there are 63 respondents.

Burden: There is no preliminary work nor is any follow-up work required of the respondents. There are no forms to complete. The annual hour burden is calculated by the amount of time that the reviewer spends at each program site interviewing the respondents and collecting file information. The time required ranges from 4 person/hours to 80 person/hours. Based on the size and complexity of the current programs, the average hours spent for each annual evaluation is estimated at 24 person/hours. 63× 24 = 1,512 person/hours per year for the collection of information.

Dated: October 30, 1998.

Kevin Gover,

Assistant Secretary-Indian Affairs.

[FR Doc. 98–29741 Filed 11–5–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Gaming Compact between the State of California and the Viejas Band of Kumeyaay Indians, which was executed on August 24, 1998.

DATES: This action is effective November 6, 1998.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: October 29, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–29743 Filed 11–5–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–050–7122–00–824G]

Intent To Prepare an Environmental Impact Statement (EIS) and Conduct Public Scoping Meetings for the Proposed St. Johns, Arizona CO_2-Helium Project

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent to Prepare an EIS and to Conduct Public Scoping Meetings.

SUMMARY: Pursuant to section 102(20)(C) of the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the BLM, Socorro Field Office, New Mexico, will be preparing an EIS regarding the proposal to develop a carbon dioxide (CO_2) and helium field in Apache County, Arizona, and Catron County, New Mexico. The CO_2-helium field appears to underlie approximately 500 square miles of private, state, and federal lands. The EIS will identify the potential impacts that the development of a CO_2-helium field and subsequent activities could have on the environment and identify appropriate measures to mitigate those impacts. A **Federal Register** Notice dated October 2, 1998, announced the intent to prepare the EIS. In this notice, BLM announces public information and scoping meetings for the proposed action and EIS.

DATES: BLM's public information and scoping meetings will include: notification of the public, federal, state, tribal, and local agencies of the proposed action; identification by the public of issues to be considered in the EIS, and the solicitation of assistance from the public to identify reasonable alternatives. In addition, the public will have the opportunity to ask questions regarding the proposed project.

The BLM will conduct four public scoping meetings in the area of the project. All of the public meetings will be informal to encourage public attendance and input. The dates, times, and locations for these meetings are as follows:

Date	*Location*
Monday, December 7, 1998, 6 p.m. to 8 p.m.	St. Johns Council Chambers, 245 W. Bursell Street, St. Johns, AZ.
Tuesday, December 8, 1998, 6 p.m. to 8 p.m.	Senior Citizens Center, 356 S. Papago Drive, Springerville, AZ.
Wednesday, December 9, 1998, 6 p.m. to 8 p.m.	Village Community Center, 4th Street (Across from High School), Reserve, NM.
Thursday, December 10, 1998, 6 p.m. to 8 p.m.	Quemado School Highway 60, Quemado, NM.

Also, a press release announcing the meeting dates and times will be submitted to newspapers in each area where the meetings will be held.

Comments: Comments on the EIS will be accepted throughout the NEPA process; however, comments specific to this early stage of scoping for the EIS will be accepted until the end of the

scoping period, which is December 21, 1998. Comments should address: (1) Issues to be considered, (2) feasible and reasonable alternatives to examine, and (3) relevant information having a bearing on the EIS. Comments should be sent to the Field Manager, Bureau of Land Management, Socorro Field Office, 198 Neel Ave., Socorro, NM 87801.

FOR FURTHER INFORMATION CALL: BLM will maintain a mailing list of parties and persons interested in being kept informed about the progress of the EIS. If you are interested in obtaining more information about the scoping meetings, EIS, or receiving future information, please call Carol Van Dorn, Team Leader, at (505) 835–0412.

SUPPLEMENTARY INFORMATION: The St. Johns, Arizona CO_2-Helium Project is a proposal of Ridgeway Arizona Oil Corporation, a wholly owned subsidiary of Ridgeway Petroleum Corporation. The purpose of the proposal is to develop the CO_2-helium field that appears to underlie approximately 500 square miles of lands in Apache County, east central Arizona and Catron County, west-central New Mexico. Ridgeway has been exploring the field since 1994 and results of the technical studies to date indicate that a large scale production of CO_2 is viable. Ridgeway intends to develop the field primarily for enhanced oil recovery. To obtain and process the large volume of CO_2, Ridgeway proposes to develop approximately 200 wells, a network of access roads and gathering pipelines, and a gas processing plant.

In both, Apache and Catron counties, some lands are privately owned, but the majority of lands in the project area are administered by state and federal agencies. The federal lands in the project area are administered by the BLM. In order to conduct development and production activities, the BLM, as lead federal agency, has determined that an EIS will be required in accordance with NEPA. The EIS will analyze the entire proposed action and associated cumulative effects. The EIS studies also will refine the proposed action and will develop alternatives, including no action and others that are identified through the scoping process. In addition, potential resource sensitivities and environmental impacts will be identified, as well as a mitigation plan to guide development and production. Resource concerns to be addressed include soils, water resources, hazardous materials, geology, minerals, air quality, noise, vegetation, wildlife, special status species, range resources, land use and access, recreation, wilderness study areas, visual resources, social and economic values, and cultural resources.

It is anticipated that the EIS process will require approximately 18 to 24 months to complete and will include public and agency scoping, coordination and consultation with Federal, state, tribal and local agencies, public review and possible hearings on the published draft EIS, and a published proposed final EIS. Publication of the Record of Decision is anticipated in mid-year 2000.

Dated: November 3, 1998.

Jon Hertz,

Assistant Field Manager.

[FR Doc. 98–29933 Filed 11–5–98; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1200–00]

Supplementary Rules

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Closure of certain public lands to camping and campfires in Shasta County, California.

SUMMARY: The BLM is prohibiting persons from camping and operating campfires on certain BLM lands adjacent to Keswick Reservoir. On September 8, 1998 the Shasta County Board of Supervisors voted to enact amendments to Chapter 8.52 of the Shasta County Code. The amendment prohibits camping and campfires on BLM lands that are cooperatively managed as a ''Rails-To-Trails'' project. This Supplementary Rule will allow the BLM to enforce the intent of the County Code on BLM lands under 43 CFR 8365.1–6.

Action

It is unlawful to camp, construct, maintain, begin the operation of, or operate a house court, campsite, or tent camp space upon any BLM property within Township 33 North, Range 5 West, sections 20, 21, 28, 29, 31, 32; and Township 32 North, Range 5 West, sections 4, 5, 6, 7, 8, 9, 16, 17, 20, and 21 of Mount Diablo Meridian as herein otherwise specified; and it shall be unlawful to occupy for living and/or sleeping purposes to reside in any established house court, campsite, or tent camp space without written permission of the BLM.

Notwithstanding the above, camping is permitted when permission has been given in writing by an authorized officer of the BLM. Said written permission shall be in the possession of a person occupying the campsite and must permit camping in the location of the campsite and for the time the campsite is occupied. Failure to possess said written permission at the campsite shall be deemed a violation of this regulation.

Furthermore, it is unlawful to build or maintain any fire, campstove, or other incendiary device so as to endanger automobiles or other property in any house court, tent camp space, squatter camp, or campsite on BLM property within Township 33 North, Range 5 West, sections 20, 21, 28, 29, 31, 32; and Township 32 North, Range 5 West, sections 4, 5, 6, 7, 8, 9, 16, 17, 20, and 21 of the Mount Diablo Meridian. It is unlawful to leave any fire, lighted and burning campstove, or other lighted and burning incendiary device unattended at any time on the premises of any house court, tent camp space, squatter camp, or campsite.

The authority for these closures and rule makings is 43 CFR 8365.1–6. Any person who fails to comply with a supplemental rule is subject to arrest and fines of up to $100,000 and/or imprisonment not to exceed 12 months.

Definitions

''Camp'' means to set up, use, or remain in or at a campsite.

''Campsite'' means any place where camping facilities are used.

''Camping Facilities'' include, but are not limited to, tents, tarpaulins, temporary shelters, motor vehicles or parts thereof, trailers, cooking facilities, cots, ground covers, bedding, hammocks, sleeping bags, and other similar equipment used to live temporarily in the outdoors or temporarily in, upon, under, or about any structure.

''Squatter Camp'' means an area of land occupied by a squatter.

DATES: This supplementary rule will take effect November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Charles M. Schultz, Field Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, CA 96002.

Charles M. Schultz,

Redding Area Manager.

[FR Doc. 98–29715 Filed 11–5–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1220–00]

Supplementary Rules

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Establishment of open hours for the Reading Island Recreation Site in Shasta County, California.

SUMMARY: The BLM is prohibiting persons from occupying the Reading Island Recreation Site between 11:00 p.m. and 5:00 a.m. (Pacific Standard Time) without written authorization from a BLM authorized officer.

SUPPLEMENTARY INFORMATION: Reading Island is a 40 acre recreation site within Shasta County, California that is adjacent to a residential area. Although most public use at the site is lawful and orderly, night time vandalism, littering and drug use has been a problem. The night time activity deters lawful public use, damages natural resources, and creates a public nuisance. The BLM can reduce this type of unlawful activity and enhance the setting for valid recreation use by requiring a permit for night time occupation of the premises and/or overnight camping.

The Reading Island Recreation Site is open to the general public between the hours of 5:00 a.m. and 11:00 p.m. Pacific Standard Time. After those hours, visitors to the site must obtain written authorization from a BLM authorized officer. Written authorization will be in the form of a Special Recreation Use Permit or equivalent instrument as determined by the BLM authorized officer. Law enforcement personnel and other public servants specifically authorized by the BLM are exempt from this closure.

The authority for these closures and rule makings is 43 CFR 8365.1–6. Any person who fails to comply with a supplemental rule is subject to arrest and fines of up to $100.000 and/or imprisonment not to exceed 12 months. Unauthorized vehicles left at the Reading Island Recreation Site while it is closed will be subject to towing at the owners expense.

DATES: This supplementary rule will take effect November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Charles M. Schultz, Field Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, CA 96002.

Charles M. Schultz,

Redding Area Manager.

[FR Doc. 98–29716 Filed 11–5–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1050–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., October 28, 1998.

The plat representing the dependent resurvey of portions of the West boundary and the subdivisional lines, and the subdivision of section 18, T. 7 S., R. 40 E., Boise Meridian, Idaho, Group 998, was accepted October 28, 1998. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

Dated: October 28, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98–29797 Filed 11–5–98; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1020–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of land Management, Boise, Idaho, effective 9:00 a.m., October 28, 1998.

The plat representing the dependent resurvey of portions of the subdivisional lines, and the subdivision of sections 20, 26, 27, 28, and 29, T. 1 S., R. 1 W., Boise Meridian, Idaho, Group 986, was accepted October 28, 1998. The survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

Dated: October 28, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98–29798 Filed 11–5–98; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1020–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., October 28, 1998.

The plat representing the dependent resurvey of portions of the East and North boundaries, and the subdivisional lines, and the subdivision of section 1, T. 5 S., R. 6 E., Boise Meridian, Idaho, Group 1017, was accepted October 28, 1998. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

Dated: October 28, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98–29799 Filed 11–5–98; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–09–1420–00]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

Correction

In the notice document published October 29, 1998 (63 FR 58065), on page 58065, correct the paragraph under ''Black Hills Meridian'' to read as follows:

''The plat, in two sheets, representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and the subdivision of section 5, Township 1 North, Range 7 East, Black Hills Meridian, South Dakota, was accepted October 19, 1998.''

Dated: October 26, 1998.

Daniel T. Mates,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 98–29714 Filed 11–5–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–09–1420–00]

Notice of Filing of Plat of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below will be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on November 30, 1998.

New Mexico Principal Meridian, New Mexico

T. 17 N., R. 5 E., accepted September 28, 1998, for Group 960 NM; T. 32 N., R. 16 W., accepted September 28, 1998, for Group 922 NM; T. 32 N., R. 19 W., accepted September 24, 1998, for Group 922 NM; T. 16 N., R. 18 W., accepted September 18, 1998, for Group 961 NM., T. 31 N., R. 19 W., accepted September 18, 1998, for Group 922 NM., T. 32 N., R. 17 W., accepted September 18, 1998, for Group 922 NM; T. 32 N., R. 18 W., accepted September 18, 1998, for Group 922 NM; and Supplemental Plat, T. 30 N., R. 12 W., accepted September 28, 1998, NM.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: October 30, 1998.

John P. Bennett,

Chief Cadastral Surveyor For New Mexico.

[FR Doc. 98–29723 Filed 11–5–98; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Assessment Prepared for Proposed Central Gulf Sale 172 on the Gulf of Mexico Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the environmental assessment on Proposed Central Gulf of Mexico Lease Sale 172.

SUMMARY: The Minerals Management Service (MMS) has prepared an environmental assessment (EA) for the proposed annual Lease Sale 172 for the Central Planning Area of the Gulf of Mexico Outer Continental Shelf.

In this EA, MMS has reexamined the potential environmental effects of the proposed action and alternatives based on any new information regarding potential impacts and issues that was not available at the time the Final Environmental Impact Statement (FEIS) for Lease Sales 169, 172, 175, 178, and 182 was prepared.

In summary, no new significant impacts were identified for proposed Lease Sale 172 that were not already assessed in the FEIS for Lease Sales 169, 172, 175, 178, and 182. As a result, MMS determined that a supplemental EIS is not required and prepared a Finding of No New Significant Impact.

FOR FURTHER INFORMATION CONTACT:

Public Information Unit, Information Services Section at number below. You may obtain single copies of the EA from the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 or by calling 1–800–200–GULF.

Dated: November 2, 1998.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 98–29735 Filed 11–5–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Preparation of an Environmental Assessment for Proposed Lease Sale 174 in the Western Gulf of Mexico (1999)

AGENCY: Minerals Management Service.

ACTION: Preparation of an Environmental Assessment.

SUMMARY: The Minerals Management Service (MMS) is beginning preparation of an environmental assessment (EA) for proposed lease Sale 174 (scheduled for August 1999) in the Western Gulf of Mexico Planning Area. In January 1997, MMS issued a Call for Information and Nominations/Notice of Intent to Prepare an EIS (Call/NOI) for the four proposed Western Gulf of Mexico sales in the current 5-year leasing program. In 1998, MMS prepared a single environmental impact statement (EIS) for all four sales. The multisale Final EIS, filed in May 1998, included an analysis of a single, ''typical'' sale, and a cumulative analysis that included the effects of holding all four sales, as well as the cumulative effects of the long-term development of the planning area. The MMS stated in the EIS that an EA would be prepared for each lease sale after the first sale covered in the EIS (Sale 171).

The preparation of this EA is the first step in the prelease decision process for Sale 174. The proposal and alternatives for Sale 174 were identified by the Director of MMS in January 1997 following the Call/NOI and were analyzed in the Western Gulf multisale EIS, which is available from the Gulf of Mexico OCS Region's Public Information Office at 1–800–200–GULF. The proposed action analyzed in the multisale EIS was the offering of all available unleased acreage in the Western Gulf of Mexico Planning Area, with the following exceptions: Blocks A–375 (East Flower Garden Bank) and A–398 (West Flower Garden Bank) in the High Island Area, East Addition, South Extension, designated as a national marine sanctuary; and Blocks 793, 799, and 816 in the Mustang Island Area, identified by the Navy as needed for testing equipment and for training mine warfare personnel. The proposal to be addressed in this EA has been revised to the following extent: two additional blocks or portions of these blocks (High Island Area, East Addition, South Extension, Block A–401 and High Island, South Addition, Block A–513), which lie partially within the Flower Gardens National Marine Sanctuary, are deferred from the proposed action in

light of the President's June 1998 withdrawal of all Marine Sanctuaries from oil and gas leasing. The proposed action includes existing regulations and proposed lease stipulations designed to reduce environmental risks. The EA will also analyze alternatives to exclude blocks near biologically sensitive topographic features, as well as the no action alternative. The MMS may also consider deferring blocks beyond the U.S. Exclusive Economic Zone, in the area referred to as the northern portion of the Western Gap, as talks between the U.S. and Mexico are currently underway regarding the establishment of a continental shelf boundary in this area. The analysis in the EA will reexamine the potential environmental effects of the proposal and alternatives based on any new information regarding potential impacts and issues that was not available at the time the Final EIS was prepared.

The MMS requests interested parties to submit comments regarding any such new information or issues that should be addressed in the EA to Minerals Management Service, Gulf of Mexico OCS Region, Office of Leasing and Environment, Attention: Regional Supervisor (MS 5400), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 by December 7, 1998. After completion of the EA, MMS will determine whether to prepare a Finding of No New Significant Impact (FONNSI) or a supplemental EIS. The MMS will then prepare and send consistency determinations to the affected States to determine whether the proposed sale is consistent with federally-approved State coastal zone management programs, and will send a proposed Notice of Sale to the Governors for their comments on the size, timing, and location of the proposed sale. The tentative schedule for the steps in the prelease decision process for Sale 174 are listed below:

Comments due to MMS, December 7, 1998;

EA/FONNSI or Supplemental EIS, March 1999;

Proposed Notice of Sale sent to Governors, March 1999;

Consistency Determinations sent to States, March 1999;

Final Notice of Sale in **Federal Register,** July 1999;

Sale, August 1999.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. George Hampton, telephone (504) 736–2465.

Dated: November 2, 1998.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 98–29734 Filed 11–5–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Announcement of Minerals Management Service Meeting on Natural Gas Royalty-In-Kind Pilot Program in the Federal Gulf of Mexico Region (GOMR)

AGENCY: Minerals Management Service, Interior.

ACTION: Correction to address—notice of meeting.

A notice of the subject meeting, to be held November 10, 1998, was published Wednesday, October 28, 1998 as notice document 98–28910. On page 57703, make the following correction:

In the **ADDRESSES** section, add the word ''East'' after the words ''N. Sam Houston Parkway''.

All other information in the October 28, 1998 notice remains the same.

Dated: November 2, 1998.

Walter D. Cruickshank,

Associate Director, for Policy and Management Improvement.

[FR Doc. 98–29712 Filed 11–5–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 31, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by November 23, 1998.

Carol D. Shull,

Keeper of the National Register.

CONNECTICUT

New Haven County
Johnson, Franklin, House, 153 S. Main St., Wallingford, 98001420

LOUISIANA

Assumption Parish
Belle Alliance, LA 308, appprox. 4 mi. N of jct. with LA 70, Donaldsonbille vicinity, 98001425

Caddo Parish
Dunn House, 9403 Greenwood Rd., Greenwood, 98001423
Highland Sanitarium, 1006 Highland Ave., Shreveport, 98001424

Lafourche Parish
Golden Meadow High School, 630 S. Bayou Dr., Golden Meadow, 98001426

Madison Parish
Hermione, 307 N. Mulberry St., Tallulah, 98001422

NEW YORK

Putnam County
St. Andrew's Episcopal Church, 26 Prospect St., Brewster, 98001427

PENNSYLVANIA

Somerset County
Hite House (Lincoln Highway Heritage Corridor Historic Resources: Franklin to Westmoreland Co. MPS) 121 W. Main St., Stoystown Borough, 98001428

TEXAS

Bexar County
Monte Vista Residential Historic District, Roughly bounded by Hildebrand, Stadium, N. St. Mary's, Asby, and San Pedro Sts., San Antonio, 98001421

VERMONT

Rutland County
Laurel Glen Mausoleum—Laurel Hall, VT 103, 0.5 mi. SE of Cuttingsville, Shewsbury vicinity, 98001429

WEST VIRGINIA

Braxton County
Weston and Gauley Bridge Turnpike, Section between Stonewell Jackson Lake and Burnsville Lake, Burnsville vicinity, 98001430

WISCONSIN

Walworth County
Warner, Anson, Farmstead, N9334 Warner Rd., Whitewater, 98001431

A Request for Removal has been made for the following resource:

LOUISIANA

Madison Parish
Herione, Parish Rd. 3030, Tallulah, 88002652

[FR Doc. 98–29837 Filed 11–5–98; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–380 Enforcement Proceeding]

Certain Agricultural Tractors Under 50 Power Take-Off Horsepower; Notice of Referral of Formal Enforcement Proceeding to an Administrative Law Judge for Issuance of an Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has referred the formal enforcement proceeding instituted on September 28, 1998, in the above-captioned investigation to an administrative law judge for appropriate proceedings and the issuance of an initial determination.

FOR FURTHER INFORMATION CONTACT: Shara L. Aranoff, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3090.

SUPPLEMENTARY INFORMATION: On February 25, 1997, at the conclusion of the original investigation, the Commission issued, inter alia, cease and desist orders directed to respondents Gamut Trading Co., Inc. and Gamut Imports. The cease and desist orders prohibit Gamut Trading Co., Inc. and Gamut Imports, as well as their ''principals, stockholders, officers, directors, employees, agents, licensees distributors, controlled (whether by stock ownership or otherwise) and/or majority-owned business entities, successors and assigns,'' from importing or selling for importation into the United States, or selling, marketing, distributing, offering for sale, or otherwise transferring (except for exportation) in the United States agricultural tractors under 50 power take-off horsepower manufactured by Kubota Corporation of Japan that infringe the KUBOTA trademark.

On July 16, 1998, Kubota Corporation, Kubota Tractor Corporation, and Kubota Manufacturing of America Corporation (collectively ''Kubota''), complainants in the original investigation, filed a complaint seeking institution of a formal enforcement proceeding against Gamut Trading Co., Inc., Gamut Imports, Ronald A. DePue (Chief Executive Officer and Chairman of the Board of Directors of Gamut Trading), and Darrel J. Du Puy (Chief Financial Officer, President, and member of the Board of Directors of Gamut Trading) (collectively ''the Gamut respondents''), alleging that they are violating the cease and desist orders. Kubota supplemented its complaint on August 26, 1998. On September 28, 1998, the Commission issued an order instituting a formal enforcement proceeding and instructing the Secretary to transmit the enforcement proceeding complaint to the Gamut respondents and their counsel for a response. On October 19, 1998, the Gamut respondents filed a joint response to the enforcement complaint denying violation of any of the Commission's remedial orders and infringement of the KUBOTA trademark, asserting that the Commission lacks jurisdiction to address the enforcement complaint, and requesting that the Commission strike the complaint as ''meritless'' and order Kubota to pay the Gamut respondents $100,000.

Having examined the Gamut respondents' response to the formal enforcement proceeding complaint filed by Kubota, and having found that issues concerning possible violation of the Commission's cease and desist orders remain, the Commission determined to refer the enforcement proceeding to Judge Paul J. Luckern for issuance, no later than six (6) months from the date of the Commission Order referring this matter, of an initial determination concerning whether Gamut Trading Co., Inc., Gamut Imports, Ronald A. DePue, and/or Darrel J. Du Puy are in violation of one or more of the Commission's cease and desist orders.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

Copies of the Commission's Order and all other nonconfidential documents filed in connection with this enforcement proceeding are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: October 28, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–29788 Filed 11–5–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, As Amended

Consistent with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. § 9622(d), notice is hereby given that on October 19, 1998, a proposed Consent Decree in *United States* v. *Alpine Aromatics International, Inc. et al.*, Civil Action No. 98–4813 (DRD), was lodged with the United States District Court for the District of New Jersey. The proposed Consent Decree will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 9601, *et seq.*, on behalf of the U.S. Environmental Protection Agency (''EPA'') against defendants relating to the Custom Distribution Services Superfund Site (''Site'') located in Perth Amboy, New Jersey. The Complaint alleges that each of the defendants is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

Pursuant to the Consent Decree, the settling defendants will reimburse the United States $1,174,000 in past response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Alpine Aromatics International, Inc., et al.*, Civil Action No. 98–4813 (DRD), D.J. Ref. 90–11–3–1750.

The proposed consent decree may be examined at the Office of the United States Attorney, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102 and at Region II, Office of the Environmental Protection Agency, 290 Broadway, New York, NY 10007–1866 and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $11.00 payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–29703 Filed 11–5–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 C.F.R. 50.7, and Section 122 of CERCLA, 42 U.S.C § 9622, notice is hereby given that on October 8, 1998, a proposed Consent Decree in *United States* v. *Archer-Daniels-Midland Company, et al.*, Civ. Action No. 198CV 2302 was lodged with the United States District Court for the Northern District of Ohio. This Consent Decree represents a settlement of claims of the United States against: (1) Archer-Daniels-Midland Company; (2) Ashland Chemical Company; (3) Baltimore-Ennis Land Company, Inc. (formerly known as Gibson-Homans); (4) Brookside Auto Parts; (5) Lincoln Electric Company; (6) Technical Products, Inc.; and (7) Warner G. Smith (collectively ''Settling Defendants''), for reimbursement of response costs in connection with the Ohio Drum Reconditioning Superfund Site (''Site'') pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. § 96–01 *et seq*.

Under this settlement with the United States, Settling Defendants will pay $100,000, plus interest, in reimbursement of response costs incurred by the United States at the Site. In addition, Settling Defendants will finance and perform the removal action at a portion of the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to the *United States* v. *Archer-Daniels-Midland Company, et al.*, D.J. Ref. 90–11–2–1300.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 1800 Bank One Center, 600 Superior Ave., East Cleveland, Ohio 44114, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy of the Consent Decree, please enclose a check payable to the Consent Decree Library in the amount of $11.75 (25 cents per page reproduction cost) for a copy of the Consent Decree without attachments or $22.75 for a copy of the Consent Decree with attachments.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–29708 Filed 11–5–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Clean Water Act

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Coal Valley Mining, Inc.*, C.A. No. 5:97–0763, was lodged on October 22, 1998, with the United States District Court for the Southern District of West Virginia. The United States' Complaint alleges that Coal Valley operated the old mine refuse area site, near Whitby, Raleigh County, West Virginia (''Site''). Further, the Complaint alleges that Coal Valley in operation of the Site violated the clean Water Act and its National Pollutant Discharge Elimination System (''NPDES'') Permit by discharging pollutants into the navigable waters of the United States. The consent decree resolves the United States' claims for civil penalties and injunctive relief, pursuant to the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* Under the consent decree, the defendant must maintain compliance with its NPDES Permit and will pay a civil penalty of $20,000 to the United States within thirty days after entry of the consent decree by the Court. Upon the completion of reclamation activities at the Site, Coal Valley is required to pay an additional cash penalty if bond funds posted with the State of West Virginia are released to Coal Valley.

The United States filed a related case, Civil Action Number 5:97–0762, against the Ridgeway Development Corporation, which operated a mine site, and Coal Valley sub-leased the mineral and surface rights of such mine to Ridgeway. Ridgeway violated the Clean Water Act and its NPDES Permit in operating the mine, and Coal Valley was named as a defendant in the Ridgeway case. The consent decree resolves the United States' claims against Coal Valley for civil penalties and injunctive relief in this related case.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Coal Valley Mining, Inc.*, DOJ Reference No. 90–5–2–1–2093.

The proposed consent decree may be examined at the office of the United States Attorney, room 4000, 300 Virginia Street-East, Charleston, West Virginia 25301; the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; and the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.75 (.25 cents per page production costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–29706 Filed 11–5–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, notice is hereby given that a proposed consent decree in *United States* v. *Sadeane Lang, Independent Executrix of the Estate of Donald R. Lang*, Civil Action No. 1:94CV57, was lodged on October 27, 1998 with the United States District Court for the Eastern District of Texas, Beaumont Division.

In the First Amended Complaint, the United States alleges that Atlantic Richfield Company (''ARCO'') and ARCO Chemical Company (''ACC'') are successors to and assumed liability for persons who by contract, agreement, or otherwise arranged for disposal or treatment, of hazardous substances at the Turtle Bayou Superfund Site (also known as the Petro-Chemical Systems, Inc. Site) (''Site''), located in Liberty County, Texas. The United States alleges that ARCO and ACC are liable under Section 107 of the Comprehensive Environmental Response, Compensation and Liability

Act (''CERCLA''), 42 U.S.C. § 9607 for costs incurred and to be incurred by the United States in response to the release of hazardous substances at the Site.

The proposed Consent Decree requires ARCO and ACC to perform nearly all of the remedial action for the Site, at a cost of approximately $20 million. The remedial action includes in-situ aquifer bioremediation, bioventing, aqueous phase soil bioremediation, soil excavation and off-site treatment and/or disposal, soil excavation and biotreatment, thermal desorption, soil washing, containment, monitored natural attenuation, institutional controls, soil vapor extraction, installation of storm water management controls, monitoring ground water, and restoration of the Site surface upon completion of the remedial action.

The proposed Consent Decree also provides that the United States covenants not to sue or take administrative action against ARCO and ACC under Sections 106, 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and Section 7003 of the Resource Conservation and Recovery Act (''RCRA'') except as specifically provided in the consent decree.

The Department of Justice will provide a RCRA public meeting in the affected area if requested and will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments and/or a request for a RCRA public meeting should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Sadeane Lang, Independent Executrix of the Estate of Donald R. Lang,* DOJ Ref. #90–11–3–709.

The proposed consent decree may be examined at the Office of the United States Attorney, 350 Magnolia Avenue, Suite 150, Beaumont, Texas 77701; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $99.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section.

[FR Doc. 98–29705 Filed 11–5–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy and 28 CFR 50.7, the Department of Justice gives notice that two proposed consent decrees in *United States* v. *Midwest Metallics, L.P., et al.,* Civil Action No. 2:98CV203JM (N.D. Ind.), were lodged with the United States District Court for the Northern District of Indiana, Hammond Division, on October 21, 1998, pertaining to the H&H Enterprises Superfund Site (the ''Site''), located in Gary, Lake County, Indiana. The proposed consent decrees would resolve certain civil claims of the United States under Sections 106(b) and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. §§ 9606(b) and 9707, against three defendants named in the action.

The first proposed consent decree, captioned ''Partial Consent Decree with Settling Defendant Midwest Metallics, L.P.,'' would require that settling defendant Midwest Metallics, L.P. (1) continue and complete an ongoing CERCLA removal action involving the treatment and off-Site disposal of accumulated waste material at the Site, and reimburse the United States' future response costs relating to the Site, including future oversight costs, (2) pay $335,000 as reimbursement of past response costs incurred by the United States, and (3) pay an additional $255,000 in penalties for alleged violations of two prior Administrative Orders on Consent relating to the Site. The second proposed consent decree, captioned ''Partial Consent Decree with Settling Defendants Cozzi Iron & Metal, Inc. and General Iron Industries, Inc.,'' would require that (1) Cozzi Iron & Metal, Inc. and General Iron Industries, Inc. pay the United States $744,000, and (2) Cozzi Iron & Metal, Inc. pay the United States an additional $12,000 in penalties for alleged violations of a prior Administrative Order on Consent relating to the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, United States Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Midwest Metallics, L.P., et al.,* Civil Action No. 2:98CV203JM (N.D. Ind.), and DOJ Reference No. 90–11–2–1092A, and the proposed consent decree(s) which the comments address.

The proposed consent decrees may be examined at: (1) the Office of the United States Attorney for the Northern District of Indiana, 1001 Main Street, Suite A, Dyer, Indiana 46311–1234 (contact Carol Davilo (219–322–8576)); (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Thomas Krueger (312–886–0562)); and (3) the U.S. Department of Justice, Environment and Natural Resources Division Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, D.C. 20005 (202–624–0892). Copies of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, D.C. 20005. In requesting copies, please refer to the referenced case and DOJ Reference Number, the proposed consent decree(s) requested, and enclose a check for the amount(s) described below, made payable to the Consent Decree Library. The cost for a copy of the ''Partial Consent Decree with Settling Defendant Midwest Metallics, L.P.'' only is $15.00 (60 pages at 25 cents per page reproduction costs), or $39.25 for that consent decree and all appendices (157 pages). The cost for a copy of the ''Partial Consent Decree with Settling Defendants Cozzi Iron & Metal, Inc. and General Iron Industries, Inc.'' only is $6.50 (26 pages at 25 cents per page reproduction costs), or $28.50 for that consent decree and all appendices (114 pages).

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–29704 Filed 11–5–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that an October 9, 1998 a proposed Consent Decree in *United States* v. *Pacific Mechanical Insulators Inc., et el.,* Civil Action No. CV–94–0043–N–EJL, was lodged with the United

States District Court for the District of Idaho.

In this action the United States sought penalties and injunctive relief for claims under the Asbestos National Emissions Standard for Harzardous Air Pollutants (''NESAHP''), 40 CFR pt. 61, Subpart M, promulgated under Section 112 of the Clean Air Act (''Act''), 42 U.S.C. 7412, for inspection, notice, work practice, and waste disposal violations. The claims arose in connection with asbestos abatement activities performed during a renovation/demolition at the Potlatch pulp and paper mill in Lewiston, Idaho. Under the Consent Decree, Pacific Technologies Inc. will pay a civil penalty of $30,000 and will comply with the Asbestos NESHAP, including designating an Asbestos Site Coordinator, training all supervisors, inspectors, and workers, providing monthly reports of its activities to U.S. EPA and local air pollution control authorities, and undertaking work practices to assure ease of monitoring of activities.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Pacific Mechanical Insulators Inc., et al.,* D.J. Ref. No. 90–5–2–1–1606.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, 877 W. Main, Boise ID 82702; EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101; and at the Consent Decree Library 1120 G Street, NW., 3rd Floor, Washington, D.C. 20005. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. When requesting a copy of the proposed Consent Decree, please enclose a check in the amount of $3.50 (25 cents per page reproduction cost) payable to the Consent Decree.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–29707 Filed 11–5–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree that would resolve the liability of Rueth Development Company and Harold G. Rueth, the two defendants in *United States of America* v. *Rueth Development Company, et al.,* Civil Action No. 2:96CV540–JM (N.D. Ind.), was lodged with the United States District Court for the Northern District of Indiana on October 23, 1998.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. § 1311, as a result of the unauthorized discharge of dredged and fill material into approximately three acres of wetlands which are alleged to constitute ''waters of the United States.'' The subject wetlands are part of the Castlewood subdivision, a single-family residential development located in Dyer, Lake County, Indiana. The consent decree permanently enjoins the two defendants from taking any actions, or causing others to take any actions, which result in the discharge of dredged or fill material into waters of the United States. The consent decree further requires the two defendants (1) to pay a $23,500.00 civil penalty and (2) to complete a full freshwater wetland restoration on the violation site in order to replace the lost functions and values of the filled wetlands.

The Department of Justice will receive written comments relating to the consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: Steven E. Rusak, Trial Attorney, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986, and should refer to *United States of America* v. *Rueth Development Company, et al.,* DJ Reference No. 90–5–1–6–556.

The proposed consent decree may be examined at the Clerk's Office, United States District Court, 136 Federal Building, 507 State Street, Hammond, Indiana 46320.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 98–29702 Filed 11–5–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *County of San Luis Obispo, California,* Case No. 97–6176 ABC (Ex) (C.D. Cal.), was lodged with the United States District Court for the Central District of California on October 27, 1998. The proposed Decree concerns alleged violations of sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. §§ 1311(a) and 1344, resulting from Defendant's unauthorized discharge of dredged and/or fill material into waters of the United States at numerous locations within the County of San Luis Obispo during the course of road, culvert and bridge repair construction projects conducted between January 1, 1995 and April 30, 1996.

The proposed Consent Decree would require the payment of a civil penalty of $240,000.

The United States Department of Justice will receive written comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to Naikang Tsao, Attorney, United States Department of Justice, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986, and should refer to *United States* v. *County of San Luis Obispo, California,* Case No. 97–6176 ABC (Ex) (C.D. Cal.).

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Central District of California, 312 North Spring Street, Los Angeles, California 90012.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 98–29701 Filed 11–5–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request; Correction

AGENCY: Office of the Secretary, DOL.

ACTION: Correction.

SUMMARY: This document contains corrections to the Department of Labor, Submission for OMB Review; Comment request. In notice document 98–26884 beginning on page 53930 in the issue of

Wednesday, October 7, 1998, make the following corrections:

On page 53931, in the third column, for OMB Control number 1205–0321 (revision) in the Frequency the entry ''Quarterly'' is corrected to read ''Annually''.

On page 53935, in the third column, for OMB Number 1210–0062 (extension), in the Description the entry ''Class Exemption 81–8 permits . . .'' is corrected to read ''Class Exemption 82–63 permits . . .''.

On page 53936, in the second column, for OMB Number 1210–0084 (extension), in the Description the entry ''ERISA Technical Release 9101 . . .'' is corrected to read ''ERISA Technical Release 91–1 . . .''.

Dated: November 2, 1998.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–29828 Filed 11–5–98; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and House Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3013, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT980001 (Feb. 13, 1998)
CT980003 (Feb. 13, 1998)
CT980004 (Feb. 13, 1998)
New Hampshire:
NH980001 (Feb. 13, 1998)
NH980002 (Feb. 13, 1998)
NH980003 (Feb. 13, 1998)
NH980005 (Feb. 13, 1998)
NH980007 (Feb. 13, 1998)
NH980008 (Feb. 13, 1998)
New Jersey:
NJ980002 (Feb. 13, 1998)
NJ980003 (Feb. 13, 1998)
NJ980004 (Feb. 13, 1998)
NJ980005 (Feb. 13, 1998)
NJ980007 (Feb. 13, 1998)

Volume II

District of Columbia:
DC980001 (Feb. 13, 1998)
DC980002 (Feb. 13, 1998)
DC980003 (Feb. 13, 1998)
Maryland:
MD980002 (Feb. 13, 1998)
MD980008 (Feb. 13, 1998)
MD980017 (Feb. 13, 1998)
MD980031 (Feb. 13, 1998)
MD980034 (Feb. 13, 1998)
MD980035 (Feb. 13, 1998)
MD980036 (Feb. 13, 1998)
MD980046 (Feb. 13, 1998)
MD980047 (Feb. 13, 1998)
MD980048 (Feb. 13, 1998)
MD980055 (Feb. 13, 1998)
DC9800056 (Feb. 13, 1998)
MD980057 (Feb. 13, 1998)
MD980059 (Feb. 13, 1998)
Virginia:
VA980008 (Feb. 13, 1998)
VA980012 (Feb. 13, 1998)
VA980013 (Feb. 13, 1998)
VA980015 (Feb. 13, 1998)
VA980022 (Feb. 13, 1998)
VA980025 (Feb. 13, 1998)
VA980027 (Feb. 13, 1998)
VA980034 (Feb. 13, 1998)
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VA980036 (Feb. 13, 1998)
VA980039 (Feb. 13, 1998)
VA980046 (Feb. 13, 1998)
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VA980055 (Feb. 13, 1998)
VA980058 (Feb. 13, 1998)
VA980063 (Feb. 13, 1998)
VA980078 (Feb. 13, 1998)
VA980079 (Feb. 13, 1998)
VA980080 (Feb. 13, 1998)
VA980081 (Feb. 13, 1998)
VA980104 (Feb. 13, 1998)
VA980105 (Feb. 13, 1998)

Volume III

Alabama:
AL980003 (Feb. 13, 1998)
AL980004 (Feb. 13, 1998)
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AL980008 (Feb. 13, 1998)
AL980018 (Feb. 13, 1998)
AL980034 (Feb. 13, 1998)
AL980044 (Feb. 13, 1998)
North Carolina:
NC980008 (Feb. 13, 1998)

Volume IV

Illinois:
IL980001 (Feb. 13, 1998)
IL980002 (Feb. 13, 1998)
IL980004 (Feb. 13, 1998)
IL980006 (Feb. 13, 1998)
IL980007 (Feb. 13, 1998)
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IL980042 (Feb. 13, 1998)
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IL980065 (Feb. 13, 1998)
IL980067 (Feb. 13, 1998)
IL980068 (Feb. 13, 1998)
IL980069 (Feb. 13, 1998)
Michigan:
MI980002 (Feb. 13, 1998)
MI980030 (Feb. 13, 1998)
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MI980075 (Feb. 13, 1998)
MI980077 (Feb. 13, 1998)
MI980083 (Feb. 13, 1998)
Wisconsin:
WI980005 (Feb. 13, 1998)
WI980019 (Feb. 13, 1998)

Volume V

Iowa:
IA980004 (Feb. 13, 1998)
IA980005 (Feb. 13, 1998)
IA980012 (Feb. 13, 1998)
IA980013 (Feb. 13, 1998)
IA980014 (Feb. 13, 1998)
IA980016 (Feb. 13, 1998)

Volume VI

North Dakota:
ND980001 (Feb. 13, 1998)
ND980002 (Feb. 13, 1998)
ND980019 (Feb. 13, 1998)
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ND980027 (Feb. 13, 1998)
ND980029 (Feb. 13, 1998)
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ND980050 (Feb. 13, 1998)

Volume VII

California:
CA980001 (Feb. 13, 1998)
CA980002 (Feb. 13, 1998)
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CA980031 (Feb. 13, 1998)
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CA980033 (Feb. 13, 1998)
CA980034 (Feb. 13, 1998)
CA980035 (Feb. 13, 1998)
CA980036 (Feb. 13, 1998)
CA980037 (Feb. 13, 1998)
CA980038 (Feb. 13, 1998)
CA980039 (Feb. 13, 1998)
CA980040 (Feb. 13, 1998)

General Wage Determination Publication

General Wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C., This 30th Day of October 1998.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–29570 Filed 11–5–98; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

Time and Date. The Board of Directors of the Legal Services Corporation will meet on November 16, 1998. The meeting will begin at 9:30 a.m. and continue until conclusion of the Board's agenda.

Location. 9th Floor Conference Room of 750 First Street NE, Washington, DC 20002.

Status of Meeting. Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

Matters To Be Considered

Open Session

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of September 12, 1998.
3. Approval of minutes of the Board's executive session of September 12, 1998.
4. Chairman's and Members' Reports.
5. President's Report.
6. Inspector General's Report.
7. Consider and act on the report of the Board's Provision for the Delivery of Legal Services Committee.
8. Consider and act on the report of the Board's Operations and Regulations Committee.
9. Consider and act on schedule and location of meetings for calendar year 1999, including whether to change the date of the Board's 1999 annual meeting and, if so, to what date.
10. Consider and act on the Board's draft *Semi-annual Report to the Congress* for the period of April 1, 1998 through September 30, 1998.

11. Consider and act on delegation to the Board Chair of authority to establish a panel and appointment the membership thereof to study and report back to the board on an issue relating to LSC grantees' representation of H–2A Workers.

12. Consider and act on renewal of John McKay's contract of employment as President of the Corporation.

13. Consider and act on President McKay's recommendation of Karen Sarjeant for appointment to the office of Vice President for Programs.

Closed Session

14. Briefing [1] by the Inspector General on the activities of the OIG.

15. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.

Open Session

16. Public comment.

17. Consider and act on other business.

Contact Person for Information: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

Special Needs

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: November 2, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–30003 Filed 11–4–98; 3:41 pm]

BILLING CODE 7050–01–U

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: November 20, 1998; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 580, Arlington, VA.

Contact person: Dr. Clifford Astill, Program Director, Hazard Reduction Program Cluster, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvdlk Arlington, VA 22230 703/306–1316.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Siting and Geotechnical Systems proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: November 2, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–29710 Filed 11–5–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–16055–ML; ASLBP No. 99–756–01–ML]

Advanced Medical Systems; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.1207 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on requests for hearing and/or petitions to intervene, and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

Advanced Medical Systems

[Denial of Materials License]

The hearing, if granted, will be conducted pursuant to 10 CFR part 2 Subpart L of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding is established as a result of the petitioner, Advanced Medical Systems, requesting a hearing on October 15, 1998, in response to an NRC letter dated September 28, 1998. The letter informs Advanced Medical Systems that its application for renewal of its license to possess and use nuclear materials has been denied due to a finding of the NRC Staff that it lacked the requisite financial assurance necessary for decommissioning the facility.

The Presiding Officer in this proceeding is Administrative Judge B. Paul Cotter, Jr. Pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Thomas D. Murphy to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Cotter and Judge Murphy in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge B. Paul Cotter, Jr., Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Thomas D. Murphy, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Issued at Rockville, Maryland, this 28th day of October 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–29785 Filed 11–5–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Dockets 72–1008 and 72–1014]

Holtec International; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Request for Exemption From Certain Regulatory Requirements

By letter dated August 3, 1998, as supplemented on September 4, 1998, Holtec International (Holtec or applicant) requested an exemption, pursuant to 10 CFR 72.7, from the requirements of 10 CFR 72.234(c). Holtec, located in Marlton, New Jersey, is seeking Nuclear Regulatory Commission (NRC or the Commission) approval to procure materials for four MPC–68 canisters, four HI–STAR 100 overpacks, four HI–STORM 100 overpacks and one HI–TRAC transfer cask (for use with the HI–STORM 100 system) prior to receipt of Certificates of Compliance (CoCs) for either the HI–STAR or the HI–STORM cask systems.

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR §§ 1622.2 & 1622.3.

In addition, Holtec seeks an exemption to authorize fabrication of four MPC–68 canisters and four HI–STAR 100 overpacks. Together, the MPC–68 canisters and the overpacks are one configuration of the HI–STAR 100 cask system. The casks are intended for use under the general license provisions of Subpart K of 10 CFR Part 72 by Southern Nuclear Operating Company (Southern Nuclear) at the Hatch Nuclear Station (Hatch) in southern Georgia.

Separately, the staff is considering issuance of an exemption from the requirements of 10 CFR 72.124(b) which states, in part, that: ''Where solid neutron absorbing materials are used, the design shall provide for positive means to verify their continued efficacy.'' Specifically, the staff is considering granting an exemption from the requirement to verify continued efficacy of neutron absorbing materials.

Environmental Assessment (EA)

Identification of Proposed Action

By letter dated October 23, 1995, as supplemented, and pursuant to 10 CFR Part 72, Holtec submitted an application to NRC for a CoC for the HI–STAR 100 cask system. Separately, on the same date, Holtec submitted an application for a CoC for the HI–STORM cask system which includes the HI–TRAC transfer cask. These applications are currently under consideration by the NRC staff. The applicant is seeking Commission approval to procure materials for four MPC–68 canisters, four HI–STAR 100 overpacks, four HI–STORM 100 overpacks, and one HI–TRAC transfer cask prior to the Commission's issuance of CoCs for either the HI–STAR or the HI–STORM cask systems. In addition, Holtec seeks an exemption to authorize fabrication of four MPC–68 canisters and four HI–STAR 100 overpacks. Together, the MPC–68 canisters and the overpacks are one configuration of the HI–STAR 100 cask system. The casks are intended for use under the general license provisions of Subpart K of 10 CFR Part 72 by Southern Nuclear at Hatch in southern Georgia. The applicant requests an exemption from the requirements of 10 CFR 72.234(c), which state that ''Fabrication of casks under the Certificate of Compliance must not start prior to receipt of the Certificate of Compliance for the cask model.''

As stated above, the staff is also considering issuance of an exemption from the requirements of 10 CFR 72.124(b) which states, in part, that: ''Where solid neutron absorbing materials are used, the design shall provide for positive means to verify their continued efficacy.'' Specifically, the staff is considering granting an exemption from the requirement to verify continued efficacy of neutron absorbing materials.

The proposed action before the Commission is whether to approve procurement of the materials and whether to grant these exemptions pursuant to 10 CFR 72.7.

Need for the Proposed Action

Holtec requested the exemption to 10 CFR 72.234(c) to ensure the availability of storage casks so that Southern Nuclear can maintain full core off-load capability at Hatch. Hatch Unit 1 will lose full core off-load capability in August 2000. Hatch has proposed an initial cask loading in September 2000. To support training and dry runs prior to the initial loading, Southern Nuclear requests the delivery of the first cask by February 2000. Holtec states that to meet this schedule, purchase of cask components must begin promptly and fabrication must begin by November 1998.

The HI–STAR 100 and HI–STORM applications, dated October 23, 1995, are under consideration by the Commission. It is anticipated that, if approved, the HI–STAR 100 CoC may be issued in late 1999 and the HI–STORM 100 by Summer of 2000. Southern Nuclear's preferred storage cask for Hatch is the HI–STORM, but Southern Nuclear is willing to use the HI–STAR 100, if the HI–STORM is not available when needed. Therefore, in recognition of the schedular differences in the certification process for the two cask systems, Holtec is requesting approval for procurement of materials for the interchangeable MPC–68 as well as for the HI–STAR, HI–STORM, and HI–TRAC. In its request, however, Holtec confirms that its current plans are only to fabricate four HI–STAR units. The proposed procurement and fabrication exemption will not authorize use of any Holtec cask to store spent fuel. That will occur only when, and if, a CoC is issued. NRC approval of the procurement and granting of the fabrication exemption request should not be construed as an NRC commitment to favorably consider any Holtec application for a CoC. Holtec will bear the risk of all activities conducted under the exemption, including the risk that the four casks Holtec plans to construct may not be usable because they may not meet specifications or conditions placed in a CoC that NRC may ultimately approve.

The exemption to 10 CFR 72.124(b) is necessary to ensure that the certification process for the HI–STAR, HI–STORM, and HI–TRAC casks takes into account previous staff conclusions that fixed neutron poisons in the similar storage casks will remain effective over the 20-year period of the license. Periodic verification of neutron poison effectiveness is not possible for these Holtec casks and, consistent with the staff's conclusion described above, is not necessary.

Environmental Impacts of the Proposed Action

Regarding the procurement approval and fabrication exemption, the Environmental Assessment for the final rule, ''Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites'' (55 FR 29181 (1990)), considered the potential environmental impacts of casks which are used to store spent fuel under a CoC and concluded that there would be no significant environmental impacts. The proposed action now under consideration would not permit use of the casks, but only procurement and fabrication. There are no radiological environmental impacts from procurement or fabrication since cask material procurement and cask fabrication do not involve radioactive materials. The major non-radiological environmental impacts involve use of natural resources due to cask fabrication. Each MPC–68 canister weighs approximately 44 tons and is made of steel. Each HI–STAR 100 overpack weighs approximately 77 tons and is fabricated mainly from steel. Each HI–STORM overpack weighs approximately 100 tons and is constructed of metal and concrete. The HI–TRAC transfer cask weighs approximately 125 tons and is made of structural steel and lead. The amount of materials required to fabricate these casks is expected to have very little impact on the associated industry. Fabrication of the metal components would be at a metal fabrication facility, not at the reactor site. While fabrication of the concrete overpacks is not contemplated at this time, it should be noted that concrete overpacks would be partially fabricated at the same fabrication facility, with only the concrete pours being done at the reactor. Fabrication of these casks is insignificant compared to the amount of metal and concrete fabrication performed annually in the United States. If the casks are not usable, the casks could be disposed of or recycled. The amount of material disposed of is insignificant compared to the amount of steel and concrete that is disposed of annually in the United States. Based upon this information, the fabrication of

these casks will have no significant impact on the environment since no radioactive materials are involved, and the amount of natural resources used is minimal.

Regarding the second exemption, in NRC's September 30, 1998, draft safety evaluation of the HI–STAR 100 cask Topical Safety Analysis Report, the NRC staff concluded that fixed neutron poisons in the HI–STAR 100 cask will remain effective for the 20-year storage period. The staff concluded that the criticality design for the HI–STAR 100 cask is based on favorable geometry and fixed neutron poisons. An appraisal of the fixed neutron poisons has shown that they will remain effective for the 20-year storage period. In addition, the staff concluded that there is no credible way to lose the fixed neutron poisons; therefore, there is no need to provide a positive means to verify their continued efficacy as required by 10 CFR 72.124(b).

Consistent with the staff conclusions in the safety evaluation, the applicant did not propose any verification of the continued efficacy of the HI-STAR 100 cask's neutron absorber.

Alternative to the Proposed Action

Since there is no significant environmental impact associated with the proposed actions, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed actions would be: (a) to deny approval of the exemption and, therefore, not allow cask fabrication until a CoC is issued and (b) to deny approval of the exemption and, therefore, not allow elimination of the requirement to verify the continued efficacy of neutron absorbing materials. These alternatives would have the same, or greater, environmental impacts.

Given that there are no significant differences in environmental impacts between the proposed action and the alternatives considered and that the applicant has a legitimate need to procure materials and fabricate the casks prior to certification and is willing to assume the risk that any fabricated casks may not be approved or may require modification, the Commission concludes that the preferred alternative is to approve the procurement request and grant the exemption from the prohibition on fabrication prior to receipt of a CoC. Similarly, the Commission concludes that since there is no significant difference in the environmental impacts between the proposed action and the alternatives for the elimination of the requirement to verify the continued efficacy of neutron absorbing materials, the Commission concludes that the preferred alternative is to grant that exemption.

Agencies and Persons Consulted

An official from the State of Georgia Department of Environmental Protection was contacted about the EA for the proposed action and had no concerns.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing EA, the Commission finds that the proposed action of (1) approving procurement of materials for four MPC–68 canisters, four HI-STAR 100 overpacks, four HI-STORM 100 overpacks, and one HI-TRAC transfer cask, and granting an exemption from 10 CFR 72.234(c) so that Holtec may fabricate four MPC–68 canisters and four HI-STAR 100 overpacks prior to issuance of a CoC will not significantly impact the quality of the human environment and, (2) granting an exemption from 10 CFR 72.124(b) so that Holtec need not verify the continued efficacy of the neutron absorbing material in storage casks will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

The request for the exemption to 10 CFR 234(c) was filed on August 3, 1998, and supplemented on September 4, 1998. For further details with respect to this action, see the applications for CoC for the HI-STAR 100 and HI-STORM 100 cask systems, both dated October 23, 1995. On September 30, 1998, a preliminary Safety Evaluation Report and a proposed CoC for the HI-STAR 100 cask system were issued by the NRC staff to initiate the rulemaking process. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 28th day of October 1998.

For the Nuclear Regulatory Commission.

William F. Kane,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–29787 Filed 11–5–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458; License No. NPF–47]

Entergy Operations, Inc.; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated September 25, 1998, David A. Lochbaum (Petitioner), acting on behalf of the Union of Concerned Scientists (UCS), has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the River Bend Station (RBS), operated by Entergy Operations, Incorporated. Petitioner requests that enforcement action be taken to require an immediate shutdown of the RBS, and that the facility remain shut down until all failed fuel assemblies are removed from the reactor core. As an alternate action, UCS also stated that following the requested shutdown, RBS could be restarted after its design and licensing bases were updated to permit operation with failed fuel assemblies. Additionally, the Petition requested a public hearing to present new plant-specific information regarding the operation of RBS, as well as to discuss a UCS report dated April 2, 1998, entitled ''Potential Nuclear Safety Hazard/Reactor Operation With Failed Fuel Cladding.''

As the basis for the request, examples were cited in the Petition (summarized below) where, in the Petitioner's opinion, the RBS Updated Safety Analysis Report (USAR) does not allow for operation with pre-existing fuel failures:

(1) Integrity of the fuel barrier is an explicit criterion in addition to radiation requirements, and RBS is violating ''the spirit, if not the letter, of [USAR Section 15A, Table 15A.2–4] Criterion 4–2 since the fuel barrier has already failed, albeit to a limited extent.''

(2) The USAR description for six design-bases events includes either the statement that the fuel barrier maintains its ''integrity and functions as designed,'' or that ''no radioactive material is released from the fuel,'' as a consequence of the event. It is the Petitioner's view that the analyses associated with these events ''appear[s] valid only when the River Bend Station is operated with no failed fuel assemblies.''

The Petitioner further reasserted the UCS position that nuclear power plants operating with fuel cladding failures were potentially unsafe and were in violation of Federal regulations. In its April 1998 report, the UCS stated that it has not been demonstrated that the effects from design-bases transients and accidents (i.e., hydrodynamic loads, fuel enthalpy changes, etc.) prevent pre-

existing fuel failures from propagating. Therefore, the Petitioner concluded that it was possible that ''significantly more radioactive material will be released to the reactor coolant system during a transient or accident than that experienced during steady state operation.'' In addition, the Petitioner also stated that, by operating with possible failed fuel cladding, RBS is violating its licensing basis for the radiation worker protection (as low as reasonably achievable [ALARA]) program as it is described in USAR Sections 12.1.1, ''Policy Considerations,'' and 12.1.2.1, ''General Design Considerations for ALARA Exposures.''

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time. By letter dated October 29, 1998, the Director denied Petitioner's request for enforcement action to require Entergy Operations, Inc., to immediately shut down RBS. In addition, the Director also extended an offer to the Petitioner for an informal public hearing at a date to be determined. A copy of the petition is available for inspection at the Commission's Public Document Room at 2120 L Street, N.W., Washington, D.C. 20555–0001.

Dated at Rockville, Maryland, This 29th day of October 1998.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–29786 Filed 11–5–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23515; 812–10554]

Ranson & Associates, Inc., et al.; Notice of Application

November 2, 1998.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 2(a)(35), 14(a), 19(b), 22(d), and 26(a)(2) of the Act and rules 19b–1 and 22c–1 under the Act, and under section 11(a) of the Act for an exemption from section 11(c) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain unit investment trusts (''UITs'') to: (a) impose sales charges on a deferred basis and waive the deferred sales charges in certain cases; (b) conduct certain offers of exchange of units; (c) publicly offer units without requiring the sponsor of the UIT to take for its own account or place with others $100,000 worth of units; and (d) distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

APPLICANTS: Ransom & Associates, Inc. (the ''Sponsor''), The Random Municipal Trust-Multi-State Series, Ranson Unit Investment Trusts (formerly, EVEREN Unit Investment Trusts), The Kansas Tax-Exempt Trust, Kemper Tax-Exempt Income Trust, Ohio Tax-Exempt Bond Trust, Kemper Government Securities Trust, Kemper Bond Enhanced Securities Trust, any future UIT sponsored by the Sponsor (collectively, the ''Trusts''), and their respective series (each, a ''Series'').[1]

FILING DATES: The application was filed on March 7, 1997, and amended on July 30, 1997. Applicants have agreed to file an amendment to the application, 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 November 24, 1998, and should be accompanied by proof or 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 the date of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, 250 N. Rock Road, Suite 150, Wichita, KS 67206.

FOR FURTHER INFORMATION, CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

[1] Any future Trust that relies on the relief will comply with the terms and conditions of the application.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. Each Series will be a series of one of the Trusts, each a UIT registered under the Act. The Sponsor will be the sponsor of the Trusts. Each Series is created by a trust indenture among the Sponsor, an evaluator, and a banking institution or trust company serving as trustee (the ''Trustee'').

2. The Sponsor acquires a portfolio of securities, which it deposits with the Trustee in exchange for certificates representing units of fractional undivided interests in the portfolio (''Units''). The Units are offered to the public by the Sponsor, underwriters, and dealers at a price which, during the initial offering period, is based upon the aggregate market value of the underlying securities plus a front-end sales charge. The sales charge currently ranges from 1% to 4.9% of the public offering price. The maximum charge usually is subject to reduction in compliance with rule 22d–1 under the Act under certain stated circumstances disclosed in the prospectus, such as for volume purchases.

3. The Sponsor maintains a secondary market for Units, and continually offers to purchase these Units at prices based upon the bid side evaluation of the underlying securities. Investors may purchase Units on the secondary market at the current public offering price plus a front-end sales charge. If the Sponsor discontinues maintaining such a market at any item for any Series, holders or Units (''Unitholders'') of such a Series may redeem their Units through the Trustee.

A. Deferred Sales Charge (''DSC'') and Waiver of DSC Under Certain Circumstances

1. Applicants request an order to the extent necessary to permit them to impose a DSC, and waive the DSC under certain circumstances. Under applicants' proposal, a portion of the DSC would be collected ''up front,'' *i.e.*, at the time an investor purchases Units, and the balance would be collected subsequently in equal installments (''Installment Payments'') from Unitholders' distributions on the Units. The Trustee will withdraw the Installment Payment from the distribution income and pay the amount

directly to the Sponsor. If distribution income is insufficient to pay an Installment Payment or if a Series' portfolio consists of non-income producing securities, the Trustee will have the authority to sell portfolio securities in an amount necessary to pay the Installment Payment.

2. When a Unitholder redeems or sells Units, the balance of the Unit holder's Installment Payments on the redeemed Units will be deducted from the proceeds of the redemption or sale. When calculating the amount due, it will be assumed that Units on which the DSC has been paid in full are redeemed first. With respect to Units on which the DSC has not been fully paid, the DSC will be applied on the assumption that Units held for the longest time are redeemed or sold first. Under certain circumstances, the Sponsor may waive the DSC in connection with redemptions or sales of Units. These circumstances will disclosed in the prospectus for the relevant Series and implemented in accordance with rule 22d–1 under the Act.

3. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required in Form N–1A relating to deferred sales charges, modified as appropriate to reflect the differences between UITs and open-end investment companies. The prospectus will state the maximum amount of DSC per Unit. The prospectus also will disclose that portfolio securities may be sold to pay the DSC if distribution income is insufficient to pay the DSC, and that the securities will be sold *pro rata* or that a specific security will be designated for sale.

B. Exchange Option and Rollover Option

1. Applicants request an order to the extent necessary to permit Unitholders of a Series to exchange their Units for Units of another Series (the ''Exchange Option''), and Unitholders of a Series that is terminating (each, a ''Rollover Series'') to exchange their Units for Units of a new Series of the same type (the ''Rollover Option''). The Exchange Option and Rollover Option would apply to all exchanges of Units sold with a front-end sales charge or a DSC.

2. A Unitholder who purchased Units under the Exchange Option or Rollover Option would pay a lower sales charge than that which would be paid for the Units by a new investor. The reduced sales charge imposed will be reasonably related to the expenses incurred in connection with the administration of the DSC program, which may include an amount that will fairly and adequately compensate the Sponsor and the participating underwriters and brokers for their services in providing the DSC program.

3. Pursuant to the Exchange Option, an adjustment would be made if Units of any Series are exchanged within five months of their acquisition for Units of a Series with a higher sales charge (the ''Five Months Adjustment''). An adjustment also would be made if Units on which a DSC is collected are exchanged for Units of a Series that imposes a front-end sales charge and the exchange occurs before the DSC collected at least equals the per Unit sales charge on the acquired Units (the ''DSC Front-End Exchange Adjustment''). If an exchange involves either the Five Months Adjustment or the DSC Front-End Exchange Adjustment, the Unitholder would pay the greater of: (a) the reduced sales charge, or (b) an amount which, together with the sales charge already paid on the exchanged Units, equals the normal sales charge on the Units of a Series being acquired (the ''Exchange Series'') on the date of the exchange. With appropriate disclosures, the Sponsor may waive such payment. Further, the Sponsor would reserve the right to vary the sales charge normally applicable to a Series, vary the charge applicable to exchanges, and modify, suspend, or terminate the Exchange Option or Rollover Option as set forth in the conditions to the application.

Applicants' Legal Analysis

A. DSC and Waiver of DSC

1. Section 4(2) of the Act defines a ''unit investment trust'' as an investment company which ''issues only redeemable securities.'' Section 2(a)(32) of the Act defines a ''redeemable security'' as a security which, upon its presentation to the issuer, entitles the holder to receive approximately his or her proportionate share of the issuer's current net assets or the cash equivalent of those assets. Rule 22c–1 under the Act requires that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption, and repurchase be based on the security's current net asset value (''NAV''). To the extent that an Installment Payment may be deemed to cause Unitholders to receive less than NAV upon redemption, applicants request relief from section 2(a)(32) and rule 22c–1.

2. Section 22(d) of the Act and rule 22d–1 under the Act require an investment company and its principal underwriter and dealer to sell securities only at the current public offering price described in the investment company's prospectus, with the exception of sales of redeemable securities at prices which reflect scheduled variations in the ''sales load.'' Section 2(a)(35) defines the term ''sales load'' as the difference between the sales price and the portion of the proceeds invested by the depositor or trustee. Applicants request relief from sections 2(a)(35) and 22(d) to the extent that the DSC may be paid in installments rather than upon purchase.

3. Under section 6(c), the SEC may exempt classes of transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants state that their proposal meets the standards of section 6(c). Applicants state that the provisions of section 22(d), rule 22d–1, and section 2(a)(35), taken together, are intended to prevent (i) riskless trading in investment company securities due to backward pricing, (ii) disruption of orderly distribution by dealers selling shares at a discount, and (iii) discrimination among investors resulting form different prices charged to different investors. Applicants assert that the proposed DSC program will present none of these abuses. Applicants contend that the deduction of the Installment Payments is consistent with the policy of forward pricing. Applicants also contend that the amount, computation, and timing of the DSC will promote fair treatment of all Unitholders, while permitting the Trusts to offer Unitholders the advantage of having a large portion of their purchase amount invested immediately. Applicants further note that the DSC program will be disclosed in the prospectus of each Series and available on the same terms to all investors. Finally, applicants state that any waiver of the DSC will be disclosed in the prospectus of each Series and implemented in accordance with rule 22d–1.

5. Section 26(a)(2), in relevant part, prohibits a trustee or custodian of a UIT from collecting from the UIT as an expense any payment to the trust's depositor or principal underwriter. Because the Trustee's payment of the DSC to the Sponsor may be deemed to be an expense under section 26(a)(2)(C), applicants request relief under section 6(c) from section 26(a)(2) to the extent necessary to permit the Trustee to collect DSC payments and disburse them to the Sponsor. Applicants submit that the relief is appropriate because the DSC is more properly characterized as a sales load than as an ''expense.''

B. Exchange Option and Rollover Option

Section 11(a) and (c) of the Act prohibit any offer of exchange by a registered UIT for the securities of any other investment company on any basis other than the relative NAV of the securities to be exchanged, unless the terms of the offer have been approved in advance by the SEC or meet the requirements of any rules adopted to regulate exchange offers. Applicants request an order under section 11(a) for an exemption from section 11(c) to permit the Exchange Option and the Rollover Option. Applicants state that the Five Months Adjustment and the DSC Front-End Exchange Adjustment in certain circumstances are appropriate in order to maintain the equitable treatment of various investors in each Series.

C. Net Worth Requirement

1. Section 14(a) of the Act requires in substance that investment companies have $100,000 of net worth prior to making a public offering. Applicants state that each Series would comply with this requirement because the Sponsor will deposit substantially more than $100,000 of debt or equity securities or a combination thereof, depending on the objective of the particular Series. Applicants assert, however, that the SEC has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Series would not satisfy section 14(a) because of the Sponsor's intention to sell all the Units of the Series.

2. Rule 14a–3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in ''eligible trust securities,'' as defined in rule 14a–3. Applicants state that they may not rely on rule 14a–3 because certain future Series (collectively, the ''Equity Series'') will invest all or a portion of their assets in equity securities, which do not meet the definition of eligible trust securities.

3. Applicants request an exemption under section 6(c) from section 14(a) to the extent necessary to exempt the Series from the net worth requirement in section 14(a). Applicants state that they will comply in all respects with rule 14a–3, except that the Equity Series will not restrict their portfolio investments to eligible trust securities.

D. Capital Gains Distribution

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the SEC may prescribe, distribute long-term capital gains more than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the ''Code''). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code. Rule 19b–1(c), under certain circumstances, excepts a UIT investing in ''eligible trust securities'' (as defined in rule 14a–3) from the provisions of rule 19b–1. Because, as noted above, the Equity Series will not limit their investments to ''eligible trust securities,'' they will not qualify for the exemption in paragraph (c) of rule 19b–1.

2. Applicants request an exemption under section 6(c) from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the sale of portfolio securities to be distributed to Unitholders along with the Equity Series' regular distributions. In all other respects, applicants will comply with Section 19(b) and rule 19b–1.

3. Applicants state that their proposal meets the standards of section 6(c). Applicants assert that any sales of portfolio securities would be triggered by the need to meet Series expenses, DSC installments, or by requests to redeem Units, events over which the Sponsor and the Equity Series do not have control. Applicants further state that reports to Unitholders that will accompany each distribution pursuant to rule 19b–1 will disclose the sources of the distribution.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

A. DSC and Waiver of DSC

1. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required in Form N–1A relating to deferred sales charges, modified as appropriate to reflect the differences between UITs and open-end investment companies.

2. Any DSC imposed on Units issued by a Series will comply with the requirements of rule 6c–10(a) (1) through (3) under the Act.

B. Exchange Option and Rollover Option

1. Whenever the Exchange Option or Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) no such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the Exchange Option or Rollover Option, or to delete a Series that has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Exchange Series or Rollover Series under section 22(e) of the Act and the rules and regulations promulgated under the Act, or (ii) an Exchange Series or Rollover Series temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. An investor who purchases Units under the Exchange Option or Rollover Option will pay a lower sales charge than that which would be paid for the Units by a new investor.

3. The prospectus of each Series and any sales literature or advertising that mentions the existence of the Exchange Option or the Rollover Option will disclose that the Exchange Option and Rollover Option are subject to modification, termination or suspension, without notice except in certain limited cases.

C. Net Worth Requirement

Applicants will comply in all respects with the requirements of rule 14a–3, except that the Equity Series will not restrict their portfolio investments to ''eligible trust securities.''

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–29784 Filed 11–5–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 23513; International Series Rel. No. 1166; 812–10558]

Ranson Unit Investment Trusts, et al.; Notice of Application

October 30, 1998.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(3) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Order requested to permit: (a) Certain series of a unit investment trust (''UIT'') to invest up to 10.5% and certain other series of a UIT to invest up to 20.5% of their respective total assets in securities of issuers that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities; and (b) a terminating series of a UIT to sell portfolio securities to a new series of the UIT.

APPLICANTS: Ranson Unit Investment Trusts (the ''Trust'') and certain subsequent series (each, a ''Series'' or ''Trust Series''), and Ranson & Associates, Inc. (the ''Sponsor'').

FILING DATES: The application was filed on March 13, 1997. Applicants have agreed to file an amendment to the application, 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 November 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, 250 N. Rock Road, Suite 150, Wichita, KS 67206–2241.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, 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 from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tell. 202–942–8090).

Applicants' Representations

1. Each Series will be a series of the Trust, a UIT registered under the Act. The Sponsor is the Trust's depositor. Each Series will be created under the laws of one of the United States pursuant to a trust agreement, which will contain information specific to that Series, and which will incorporate by reference a master trust agreement between the Sponsor and a financial institution that is a bank within the meaning of section 2(a)(5) of the Act and that satisfies the criteria in section 26(a) of the Act (the ''Trustee'').

2. Each Series will hold a portfolio of common stocks which represents a portion of a specific index (each, an ''Index''). The investment objective of each Series is to seek a greater total return than that achieved by the stocks comprising the entire related Index over the life of the Series.

3. Certain Series (each, a ''Defined Ten Series'') will invest approximately 10%, but no more than 10.5%, of their total assets in each of the ten common stocks in the Dow Jones Industrial Average (''DJIA''), the Financial Times Ordinary Share Index (''FT Index''), or the Hang Seng Index, as the case may be, having the highest dividend yields no more than three business days prior to the Defined Ten Series' initial date of deposit. Certain other Series (each, a ''Defined Five Series'') will invest approximately 20%, but in no event more than 20.5%, of their total assets in each of the five lowest dollar price per share stocks of the ten common stocks in the DJIA, the FT Index, or the Hang Seng Index, as the case may be, having the highest dividend yields not more than three business days prior to the Series' initial date of deposit.[1]

4. Each of the DJIA, the FT Index, and the Hang Seng Index is a recognized indicator of the stock market in its respective country.[2] The publishers of the Indices are not affiliated with any Series or the Sponsor, and do not participate in any way in the creation of any Series or the selection of its stocks. The common stocks included in the Indices may include stocks of issuers that derive more than 15% of their gross revenues from securities related activities, as that term is defined in rule 12d3–1 under the Act, discussed below (''Securities Related Issuers'').

5. The securities deposited in each Series will be chosen solely according to the formula described above, and will not necessarily reflect the research opinions or buy or sell recommendations of the Sponsor. The Sponsor is authorized to determine the date of deposit, to purchase securities for deposit in the Series, and to supervise each Series' portfolio. The Sponsor will have no discretion as to which securities are purchased.

6. The Series' portfolios will not be actively managed. Sales of portfolio securities will be made in connection with redemptions of units, payment of expenses, and the termination of a Series. The Sponsor has no discretion as to when securities will be sold except that it is authorized to sell securities in extremely limited circumstances, such as when an issuer defaults on the payment of any of its outstanding obligations, or when the price of a security has declined to such an extent or other credit factors exist so that in the opinion of the Sponsor, it would be detrimental to the Series to retain the securities. The adverse financial condition of an issuer will not necessarily require the sale of its securities from a Series' portfolio.

7. Each Series will have a contemplated date (a ''Rollover Date'') on which holders of units in that Series (a ''Rollover Trust Series'') may at their option redeem their units in the Rollover Trust Series and receive in return units of a subsequent Series of the same type (a ''New Trust Series''). The New Trust Series will be created on or about the Rollover Date. The securities in each Rollover Trust Series will be: (a) Actively traded (*i.e.*, have had an average daily trading volume in

[1] The Sponsor strives to purchase equal values of each of the common stocks in a Series' portfolio. However, it is more efficient to purchase securities in 100 share lots and 50 share lots. As a result, applicants may choose to purchase securities of a Securities Related Issuer (as defined below) which represent more than 10%, but in no event more than 10.5%, of a Defined Ten Series' assets, and more than 20%, but in no event more than 20.5%, of a Defined Five Series' assets on the initial date of deposit to the extent necessary to enable the Sponsor to meet its purchase requirements and to obtain the best price for the securities.

[2] The DJIA, which is owned by Dow Jones & Company, Inc., comprises 30 widely-held common stocks listed on the New York Stock Exchange, which are chosen by the editors of *The Wall Street Journal.* The FT Index comprises 30 widely-held common stocks listed on the London Stock Exchange, which are chosen by the editors of *The Financial Times.* The Hang Seng Index comprises 33 common stocks listed on the Stock Exchange of Hong Kong, Ltd.

the preceding six months of at least 500 shares equal in value to at least U.S. $25,000) on (i) an exchange (an ''Exchange'') which is either a national securities exchange which meets the qualifications of section 6 of the Securities Exchange Act of 1934, or a foreign securities exchange that meets the qualifications set forth in the proposed amendments to rule 12d3–1(d)(6) under the Act [3] and that releases daily closing prices, or (ii) the Nasdaq National Market System (the ''Nasdaq-NMS''), and (b) included in a published Index, including but not limited to the DJIA, the FT Index, or the Hang Seng Index (the securities meeting these requirements are referred to in this notice as ''Equity Securities'').

8. Applicants anticipate that there will be some overlap in the Equity Securities selected for the portfolios of a Rollover Trust Series and the related New Trust Series. Upon termination, absent the requested relief, a Rollover Trust Series would sell all of its Equity Securities on the applicable Exchange or Nasdaq-NMS. Likewise, a New Trust Series would acquire its Equity Securities on the applicable Exchange or Nasdaq-NMS. This procedure would result in the unitholders of both the Rollover Trust Series and the New Trust Series incurring brokerage commissions on the same Equity Securities.

Applicants' Legal Analysis

A. Purchases of Stocks of Securities Related Issuers in Excess of Rule 12d3–1 Limits

1. Section 12(d)(3) of the Act, with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act exempts the purchase of securities of a Securities Related Issuer, provided that, among other things, immediately after the acquisition, the acquiring company has invested not more than five percent of the value of its total assets in securities of the Securities Related Issuer.[4]

2. As noted above, applicants state that some of the stocks comprising the DJIA, the FT Index, and the Hang Seng Index include securities of Securities Related Issuers. Applicants assert that, in order to comply with rule 12d3–1, absent the requested relief, each Defined Ten Series and Defined Five Series may be precluded from most effectively implementing the Series' investment objective.

3. Under section 6(c), the SEC may exempt classes of transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an exemption under section 6(c) from section 12(d)(3) to permit a Defined Ten Series to invest up to approximately 10%, but in no event more than 10.5%, of the value of its total assets in securities of a Securities Related Issuer, and to permit a Defined Five Series to invest up to approximately 20%, but in no event more than 20.5%, of the value of its total assets in securities of a Securities Related Issuer.

5. Applicants state that the proposed transactions satisfy the requirements of sections 6(c). Applicants state that section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, to prevent potential conflicts of interest, and to eliminate certain reciprocal practices between investment companies and securities related businesses. One potential conflict could occur if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicants state that this concern does not arise in connection with the Defined Five or Defined Ten Series because neither the Series nor the Sponsor has discretion in choosing the securities of a Securities Related Issuer or the amount purchased; rather, the Securities Related Issuer must qualify as either one of the ten highest dividend yielding stocks or one of the five lowest dollar price per share stocks of the ten highest dividend yielding stocks in the DJIA.

6. Applicants also state that the effect of a Defined Five or Defined Ten Series' purchase on the stock of a Securities Related Issuer would be *de minimis.* Applicants assert that the Securities Related Issuers represented in the DJIA, the FT Index and the Hang Seng Index are widely held, have active markets, and potential purchases by any Defined Five or Defined Ten Series would represent an insignificant amount of the outstanding common stock and the trading volume of any of these Securities Related Issuers.

7. Another potential conflict of interest could occur if an investment company directed brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicants agree, as a condition to the order, that no company held in the portfolio of a Defined Ten or Defined Five Series nor any affiliate of the company will act as a broker for any Series in the purchase or sale of any security for the Series' portfolio.

B. Purchases and Sales Between Trust Series

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include, in pertinent part, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Each Trust Series will have a common sponsor. Since the Sponsor of a Trust Series may be deemed to control the Trust Series, all of the Trust Series may be deemed to be under common control and, thus, affiliated persons of each other.

2. Rule 17a–7 under the Act permits registered investment companies that might be deemed affiliates solely by reason of having common investment advisers, directors, and/or officers, to purchase securities from, or sell securities to, one another at an independently determined price, provided certain conditions are met. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraph (e).

3. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor certain procedures to assure compliance with the rule. Since a UIT does not have a board of directors, the Trust Series

[3] Investment Company Act Release No. 17096 (Aug. 3, 1989) (proposing amendments to rule 12d3–1). The proposed amended rule defined a ''Qualified Foreign Exchange'' to mean a stock exchange in a country other than the United States where: (1) Trading generally occurred at least four days a week; (2) there were limited restrictions on the ability of acquiring companies to trade their holdings on the exchange; (3) the exchange had a trading volume in stocks for the previous year of at least U.S. $7.5 billion; and (4) the exchange had a turnover ratio for the preceding year of at least 20% of its market capitalization. The version of the amended rule that was adopted did not include the part of the proposed amendment defininig the term ''Qualified Foreign Exchange.''

[4] Under rule 12d3–1, a Securities Related Issuer is a person that derives more than 15% of its gross revenues from activities as a broker, dealer, underwriter, investment adviser registered under the Investment Advisers Act of 1940, or investment adviser to a registered investment company.

would be unable to comply with this requirement.

4. Section 17(b) of the Act provides that the SEC will 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 policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. As noted above, section 6(c) of the Act provides that the SEC may exempt classes of transactions if the exemption is necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request relief under sections 6(c) and 17(b) to permit a Rollover Trust Series to sell Equity Securities to a New Trust Series and to permit the New Trust Series to purchase the Equity Securities.

5. Applicants state that the proposed transactions satisfy the standards of sections 6(c) and 17(b). Applicants represent that purchases and sales between Trust Series will be consistent with the policy of each Trust Series. Applicants further state that permitting the proposed transactions would result in savings on brokerage fees for the Trust Series.

6. Applicants state that the condition that the Equity Securities must be actively traded on an Exchange or the Nasdaq-NMS protects against overreaching. In addition, applicants state that the Sponsor will certify to the Trustee, within five days of each sale of Equity Securities from a Rollover Trust Series to a New Trust Series: (a) that the transaction is consistent with the policy of both the Rollover Trust Series and the New Trust Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of the transaction, and (c) the closing sales price on the Exchange or on the Nasdaq-NMS for the sale date of the Equity Securities. The Trustee will then countersign the certificate, unless, in the unlikely event that the Trustee disagrees with the closing sales listed on the certificate, the Trustee immediately informs the Sponsor orally of any such disagreement and returns the certificate within five days to the Sponsor with corrections duly noted. Upon the Sponsor's receipt of a corrected certificate, if the Sponsor can verify the corrected price by reference to an independently published list of closing sales prices for the date of the transactions, the Sponsor will ensure that the price of the units of the new Trust Series, and distributions to holders of the Rollover Trust Series, accurately reflect the corrected price. To the extent that the Sponsor disagrees with the Trustee's corrected price, the Sponsor and the Trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

A. Purchases of Stocks of Securities Related Issuers in Excess of Rule 12d3–1 Limits

No company held in a Defined Ten Series portfolio or a Defined Five Series portfolio, nor any affiliate of the company, will act as broker for any Defined Ten Series or any Defined Five Series in the purchase or sale of any security for the Series' portfolio.

B. Purchases and Sales Between Trust Series

1. Each sale of Equity Securities by a Rollover Trust Series to a New Trust Series will be effected at the closing price of the Equity Securities sold on the applicable Exchange or the Nasdaq-NMS on the sale date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of the transactions will be fully disclosed to investors in the prospectus of each Rollover Trust Series and New Trust Series.

3. The Trustee of each Rollover Trust Series and New Trust Series will: (a) review the procedures relating to the sale of securities from a Rollover Trust Series and the purchase of those securities for deposit in a New Trust Series, and (b) make such changes to the procedures as the Trustee deems necessary that are reasonably designed to comply with paragraphs (a) through (d) of rule 17a–7.

4. A written copy of these procedures and a written record of each transaction pursuant to the order will be maintained as provided in rule 17a–7(f).

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–29719 Filed 11–5–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 9, 1998.

A closed meeting will be held on Tuesday, November 10, 1998, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 10, 1998, at 11:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: November 2, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–29864 Filed 11–3–98; 4:57 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40621; File No. SR–NYSE–98–38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Extending the Pilot Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Material

October 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 October 29, 1998, the New York Stock Exchange, Inc. (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to extend the current pilot period regarding Exchange Rule 451, ''Transmission of Proxy Material,'' and Exchange Rule 465, ''Transmission of Interim Reports and Other Material'' (collectively the ''Rules''). The Rules establish guidelines for the reimbursement of expenses by NYSE issuers to NYSE member organizations for the processing and delivery of proxy materials and other issuer communications to security holders whose securities are held in street name. The present pilot period regarding the Rules is scheduled to expire on October 31, 1998. The Exchange proposes to extend the pilot period through February 12, 1999.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, 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 Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ''Initial Filing''[3] revised the rules to lower certain reimbursement guidelines, create incentive fees to eliminate duplicative mailings, and establish a supplemental fee for intermediaries that coordinate multiple nominees. The Commission approved the Initial Filing as a one-year pilot, and designated May 13, 1998, as the date of expiration. In the ''February Filing,''[4] the Exchange extended the pilot period through July 31, 1998, and lowered the rate of reimbursement for mailing each set of initial proxies and annual reports from $.55 to $.50. In the ''July Filing,''[5] the Exchange extended the pilot period through October 31, 1998, and kept intact the five cent fee reduction implemented by the February Filing. This proposed rule change would extend the pilot through February 12, 1999, and likewise keep intact the five cent fee reduction.

The extension of the pilot period would give the Commission additional time to consider the ''March Filing,''[6] without a lapse in the current rules. In the March Filing, the Exchange proposed a change to the Rules regarding ''householding'' and proposed extending the pilot period through June 30, 2001. Thus, absent an extension of the pilot period, the fees in effect prior to the Initial Filing[7] would return to effectiveness, creating confusion among NYSE member organizations and issuers. Furthermore, the extension will provide the Exchange's independent auditor with additional time to finish its review of the impact of the pilot fee structure and will provide the Commission with an opportunity to review the auditor's Audit Report.[8]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[9] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange further believes that the proposed rule change satisfies the requirement under Section 6(b)(5)[10] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not 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 not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date; the proposed rule change has become effective pursuant to Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 38406 (Mar. 14, 1997), 62 FR 13922 (Mar. 24, 1997). The Initial Filing contains a detailed description regarding the background and history of the Rules.

[4] *See* Securities Exchange Act Release No. 39672 (Feb. 17, 1998), 63 FR 9034 (Feb. 23, 1998).

[5] *See* Securities Exchange Act Release No. 40289 (July 31, 1998), 63 FR 42652 (Aug. 10, 1998).

[6] *See* Securities Exchange Act Release No. 39774 (Mar. 19, 1998), 63 FR 14745 (Mar. 26, 1998).

[7] The Exchange's filing mistakenly references the February Filing rather than the Initial Filing. The Exchange confirmed that its reference to the February Filing was an oversight and that it intended to refer to the Initial Filing. Telephone conversation between Michael J. Simon, Attorney, Milbank Tweed Hadley & McCloy, and Michael Loftus, Attorney, Division of Market Regulation, Commission (October 29, 1998).

[8] As noted in the March Filing, the Exchange committed to undertake an independent audit of the pilot fee structure during the 1998 proxy season.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Exchange Act [11] and Rule 19b–4(e)(6) [12] thereunder.

A proposed rule change filed under Rule 19b–4(e)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(e)(6)(iii) [13] permits the Commission to designate such shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission designate such shorter time period so that the proposed rule change may take effect immediately upon its filing. The immediate effectiveness would: (i) continue to make available the five cent fee reduction regarding the distribution of each set of initial proxies and annual reports; (ii) provide the Commission with sufficient time to complete its review of the March Filing and analyze the Audit Report concerning the pilot fee structure that will be prepared by the Exchange's independent auditor; and (iii) allow the current pilot fee structure to continue uninterrupted.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change effective immediately upon filing for the following reasons. The proposed rule change would continue to make available the five cent fee reduction regarding the distribution of each set of initial proxies and annual reports. This fee reduction should continue to benefit NYSE issuers and public investors in the form of lower costs and expenses. As the Commission noted in the March Filing, the fee reduction is based upon the Exchange's experience with the reimbursement guidelines and better reflects the actual costs incurred by NYSE member organizations.

The proposed rule change also extends the expiration date of the pilot period from October 31, 1998, through February 12, 1999. The extension of the pilot period will provide the Commission with additional time to complete its review of the March Filing [14] and the opportunity to further evaluate the proposal. Furthermore, the current pilot period is due to expire about the same time as the estimated date on which the Exchange hopes to deliver to the Commission the Audit Report examining the proxy distribution process with respect to securities held in street name. The extension will therefore provide the Commission with the necessary time to review the Audit Report in connection with its review of the pending March Filing.

The Commission notes that unless the current pilot period's expiration date is extended, the reimbursement rates for proxy materials distributed after October 31, 1998, will revert to those in effect prior to the pilot period. The Commission believes such a result would be confusing and counterproductive, especially given that the March Filing proposing to extend the pilot period through June 30, 2001, is still pending with the Commission.

For all of the reasons set forth above, the Commission believes it is reasonable that the proposed rule change become immediately effective upon the date of filing, October 29, 1998. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, 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, 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 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–98–38 and should be submitted by November 27, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–29718 Filed 11–5–98; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(e)(6).

[13] 17 CFR 240.19b–4(e)(6)(iii).

[14] The Commission received approximately 46 comment letters on the March Filing. As part of its review of the March Filing, the Commission will consider the substance of those comment letters.

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3142; Amendment #1]

State of Missouri

In accordance with a notice from the Federal Emergency Management Agency dated October 29, 1998, the above-numbered Declaration is hereby amended to include Platte and Ray Counties, Missouri as a disaster area due to damages caused by severe storms and flooding which occurred October 4 through October 11, 1998.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Buchanan in the State of Missouri may be filed until the specified date at the previously designated location. Any other counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is December 13, 1998 and for economic injury the termination date is July 14, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 2, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–29805 Filed 11–5–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending on October 30, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–4649.

Date Filed: October 26, 1998.

Parties: Members of the International Air Transport Association.

Subject: PTC123 0050 dated October 20, 1998 r1–002kk. PTC123 0051 dated October 20, 1998 r2–002pp. Mid/South Atlantic Expedited Resos. Intended effective date: November 15, 1998.

Docket Number: OST–98–4655.
Date Filed: October 28, 1998.
Parties: Members of the International Air Transport Association.
Subject: CAC/Reso/190 dated June 5, 1998, Finally Adopted Resolutions r1–6, CAC/Meet/123 dated April 20, 1998—Minutes, Intended effective date: October 1/January 1, 1999.

Docket Number: OST–98–4656.
Date Filed: October 28, 1998.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex Reso 024f—Pakistan; Local Currency Fare Changes; Intended effective date: November 1, 1998.

Docket Number: OST–98–4657.
Date Filed: October 28, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC123 0053 dated October 23, 1998 r1; PTC123 0054 dated October 23, 1998 r2; Mid/South Atlantic Expedited Resos; Intended effective date: January 1, 1998.

Docket Number: OST–98–4658.
Date Filed: October 28, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC123 0052 dated October 23, 1998; North Atlantic Expedited Reso 002hh; Intended effective date: January 1, 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–29827 Filed 11–5–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 30, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–4660.
Date Filed: October 28, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 25, 1998.
Description: Application of Continental Micronesia Inc., pursuant to 49 U.S.C. 41102 and Subpart Q, applies for renewal of Segment 7 of its Route 171 authority for at least a five-year period.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–29826 Filed 11–5–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular; Manufacturing Process of Premium Quality Titanium Alloy Rotating Engine Components

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of Advisory Circular (AC).

SUMMARY: This notice announces the issuance of Advisory Circular (AC), No. 33.15–1, Manufacturing Process of Premium Quality Titanium Alloy Rotating Engine Components. This AC provides guidance and information for compliance pertaining to the materials suitability and durability requirements, § 33.15, as applicable to the manufacture of titanium alloy high energy rotating parts of aircraft engines. Like all AC material, this AC is not, in itself, mandatory and does not constitute a regulation. It is issued to provide an acceptable means, but not the only means, of compliance with § 33.15. While these guidelines are not mandatory, they are derived from extensive Federal Aviation Administration (FAA) and industry experience in determining compliance with the pertinent regulations.

DATES: Advisory Circular No. 33.15–1, was issued by the New England Aircraft Certification Service, Engine and Propeller Directorate on September 22, 1998.

FOR FURTHER INFORMATION CONTACT: Tim Mouzakis, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA, 01803, telephone (781) 238–7114, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Background

Advisory Circulars 21–1B, 21–6A, 21–9A, 21–27, and 21.303–1A, provide a means to obtain and maintain production approvals; however, these documents do not fully cover the manufacturing processes used in the manufacture of premium quality titanium alloy forged rotating components for type certificated turbine engines. This AC, therefore, provides supplemental guidance for the establishment of manufacturing processes, in process material and component inspections, and finished component inspections, for manufacture of premium quality titanium alloy forged rotating components, such as disks, spacers, hubs, shafts, spools and impellers, but not blades.

Interested parties were given the opportunity to review and comment on the draft AC during the proposal and development phases. Notice was published in the **Federal Register** on July 17, 1997 (62 FR 38338), to announce the availability of, and comment to the draft AC.

This advisory circular, published under the authority granted to the Administrator by 49 U.S.C. 106(g), 4113, 44701–44702, 44704, provides guidance for these requirements.

Issued in Burlington, Massachusetts, on September 22, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–29783 Filed 11–5–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 23.1419–2A, Certification of Part 23 Airplanes for Flight in Icing Conditions

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 23.1419–2A, Certification of Part 23 Airplanes for Flight in Icing Conditions. This AC sets forth an acceptable means, but not the only means of demonstrating compliance with the ice protection requirements in Title 14 of the Code of Federal Regulations (14 CFR) Part 23. The Federal Aviation Administration (FAA) will consider other methods of demonstrating compliance that an applicant may elect to present.

DATES: Advisory Circular 23.1419–2A was issued by Acting Manager, Small Airplane Directorate, Aircraft Certification Service, ACE–100, on August 19, 1998.

How to obtain copies: A copy may be obtained by writing the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse SVC–121.23, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785, or by faxing your request to that office at 301–386–5394.

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

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–29779 Filed 11–5–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Douglas County, CO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advice the public that an environmental impact statement/4(f) evaluation will be prepared for transportation improvements in Douglas County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Duran, FHWA, Colorado Division, 555 Zang Street, Room 250, Lakewood, CO, 80228, Telephone: (303) 969–6730 extension 385, or Ms. Theresa Tiehen, Colorado Department of Transportation, Region 1, 18500 East Colfax Avenue, Aurora, CO 80011, Telephone: (303) 757–9285.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Colorado Department of Transportation (CDOT) will prepare an environmental impact statement (EIS)/Section 4(f) evaluation for transportation improvements on Interstate 25 (I–25) between the I–25/Lincoln Avenue interchange (I–25 Milepost 193) and south of Castle Rock (I–25 Milepost 178) a distance of approximately 15 miles and on Colorado State Highway 85 (SH 85) as an alternative route between the Colorado 470 (C–470) (SH 85 Milepost 200) and the SH 85/I–25 interchange in Castle Rock (SH 85 Milepost 184) a distance of approximately 16 miles. The EIS will be conducted in conjunction with a major investment study (MIS) for the I–25 and SH 85 north-south corridor between Castle Rock and Denver. The proposed improvements will be identified in the MIS and the EIS/Section 4(f) evaluation.

The MIS and EIS/Section 4(f) evaluation will evaluate improvement alternatives to compare to the No-Build Alternative. These alternatives include additional general purpose lanes on I–25 and SH 85, toll facility lanes on I–25, exclusive bus/carpool lanes on I–25, rail alternatives along I–25 and SH 85, transportation management options (such as transportation systems management, transportation demand management and intelligent transportation systems), new or improved interchanges on I–25, and combinations of the various alternatives. The EIS will satisfy the requirements of the 1990 Clean Air Act Amendments.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. Project scoping will be accomplished through coordination with affected parties, organizations, federal, state, and local agencies and through public meetings in the project corridor. Information on the time and place of the public scoping meetings will be provided in the local newspapers. To be placed on the public mailing list to receive additional project information, contact Theresa Tiehen at the address previously provided. The MIS and draft EIS/Section 4(f) evaluation will be available for public and agency review and comment prior to the public hearing.

To ensure that a full range of issues related to the proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS/Section 4(f) evaluation should be directed to Theresa Tiehen at the CDOT address previously provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: October 20, 1998.

Ronald A. Speral,

Environmental/ROW Program Manager, Colorado Division, Federal Highway Administration, Lakewood, Colorado.

[FR Doc. 98–29713 Filed 11–5–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33666]

Belt Line Division of Tacoma Public Utilities—Operation Exemption—in Pierce, Thurston and Lewis Counties, WA

Belt Line Division of Tacoma Public Utilities (Belt Line), an existing Class III carrier,[1] has filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 131.5 miles of the City of Tacoma, WA (City), rail line (the line) in Pierce, Thurston, and Lewis Counties, WA: (1) between milepost 2192.0, at Tacoma, and milepost 17.7, at Chehalis; and (2) between milepost 2192.0, at Tacoma, and milepost 64.2, at Morton. The lines have been operated previously by Tacoma Eastern Railway Company (TE).[2]

Pursuant to 49 CFR 1150.42(e), Belt Line certified on October 23, 1998, that its annual revenues exceed $5 million and that it has, as of September 23, 1998, served the national offices of the labor unions with a copy of a notice of its intent to undertake this transaction and posted such notice at the workplace of the employees on the affected lines on September 23, 1998.

The transaction was expected to be consummated on or after October 30, 1998.[3]

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance

[1] Applicant represents that the Charter of the City divides its operations into Public Utilities and General Government. The General Government portion of the City evidently owns the lines discussed in this notice and is negotiating with the Public Utilities portion of the City, which is evidently responsible for operations. Belt Line currently operates a shortline railroad in support of the Port of Tacoma.

[2] The Board recently granted the City's application under 49 U.S.C. 10903 permitting the discontinuance of operations by TE over the line. *See Tacoma Eastern Railway Company—Adverse Discontinuance of Operations Application—a Line of City of Tacoma, in Pierce, Thurston and Lewis Counties, WA,* STB Docket No. AB–548 (STB served Oct. 16, 1998).

[3] The date of consummation under normal circumstances would be December 22, 1998 (60 days after Belt Line's certification to the Board that it had complied with the Board's rule at 49 CFR 1150.42(e)). In a decision in this proceeding served on October 30, 1998, the Board found that sufficient notice to rail employees and their representatives had been given under the circumstances of this case and, at the request of Belt Line, waived, in part, the 60-day period to allow consummation on October 30, 1998.

Docket No. 33666 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, D.C. 20423–0001. In addition, a copy of each pleading must be served upon Peter A. Greene, Esq., Thompson Hine & Flory LLP, 1920 N Street, N.W., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: November 2, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–29822 Filed 11–5–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33675]

Minnesota Commercial Railway Company—Lease and Operation Exemption—Canadian Pacific Railway Company (Soo Line District)

Minnesota Commercial Railway Company (MC), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire by long-term lease from the Canadian Pacific Railway Company (Soo Line District) (CP) and operate (1) approximately 22 miles of trackage in an area known as the South Minneapolis Switching District from approximately milepost 416+/− to the end of track maintenance, at about 48th Street, South, Minneapolis, MN (no milepost); and (2) one mile of incidental trackage over CP's trackage east of Merriam Park.

Because MC's projected annual revenues after the transaction will exceed $5 million, MC has certified to the Board that the required notice of the transaction was sent to the national offices of the labor unions representing employees on the line and posted at the workplace of the employees on the affected lines on July 31, 1998. *See* 49 CFR 1150.42(e).[1] The transaction was scheduled to be consummated on November 1, 1998.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33675, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eugenia Langan, Esq., Shea and Gardner, 1800 Massachusetts Avenue, N.W., Washington, DC 20036.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: November 2, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–29823 Filed 11–5–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33676]

Minnesota Commercial Railway Company—Lease and Operation Exemption—Union Pacific Railroad Company

Minnesota Commercial Railway Company (MC), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire by long-term lease from the Union Pacific Railroad Company (UP) and operate approximately 2.95 miles +/− of industrial trackage in an area known as the Southeast Minneapolis Switching District.[1]

Because MC's projected annual revenues after the transaction will exceed $5 million, MC has certified to the Board that the required notice of the transaction was sent to the national offices of the labor unions representing employees on the line and posted at the workplace of the employees on the affected lines on August 31 1998. *See* 49 CFR 1150.42(e).[2] The transaction was scheduled to be consummated on November 1, 1998.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33676, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eugenia Langan, Esq., Shea and Gardner, 1800 Massachusetts Avenue, N.W., Washington, DC 20036.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: November 2, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–29824 Filed 11–5–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 203X)] [1]

Norfolk Southern Railway Company—Abandonment Exemption—in Madison and Bond Counties, IL

On October 16, 1998, Norfolk Southern Railway Company (NSR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption

[1] While the required notice to employees had been given on July 31, 1998, MC did not certifiy to the Board that it had done so until October 22, 1998, when it filed its notice of exemption. The exemption would normally become effective 60 days after MC's certification to the Board that it had complied with the Board's rule at 49 CFR 1150.42(e). In a decision in this proceeding served on October 30, 1998, however, the Board found that sufficient notice to rail employees and their representatives had been given in this case and, at the request of MC, waived, in part, the 60-day period to allow consummation on November 1, 1998.

[1] MC notes that the trackage is all yard limit industrial switching territory and that no mileposts are assigned this area by UP.

[2] While the required notice to employees had been given on August 31, 1998, MC did not certify to the Board that it had done so until October 22, 1998, when it filed its notice of exemption. The exemption would normally become effective 60 days after MC's certification to the Board that it had complied with the Board's rule at 49 CFR 1150.42(e). In a decision in this proceeding served on October 30, 1998, however, the Board found that sufficient notice to rail employees and their representatives had been given in this case and, at the request of MC, waived, in part, the 60-day period to allow consummation on November 1, 1998.

[1] NSR has filed with the Board two related petitions for exemption. In *Norfolk Southern Railway Company—Purchase Exemption—Union Pacific Railroad Company,* STB Finance Docket No. 33609 (STB served Oct. 29, 1998), NSR is proposing to purchase from UP, and to operate approximately 15.3 miles of rail line between Monterey Junction, IL (including the southwest leg of the wye track at Monterey Junction), and DeCamp, IL, plus certain yard tracks at Madison, IL. In *Norfolk Southern Railway Company—Lease and Operation Exemption—Union Pacific Railroad Company,* STB Finance Docket No. 33610 (pending), NSR is proposing to lease from UP, and to operate, approximately 4.7 miles of rail line between Monterey Mine No. 1 near Carlinville, IL, and Monterey Junction, IL, and a leg of the wye track and related trackage at Monterey Junction.

from the provisions of 49 U.S.C. 10903 to abandon a 39.1-mile branch line of railroad known as the Madison-Sorento Line or the Madison Branch, extending between milepost TS–406.6 at Sorento, IL, and milepost TS–445.7 at Madison, IL, in Madison and Bond Counties, IL.[2] The line traverses U.S. Postal Service Zip Codes 62001, 62025, 62060, 62074, and 62086, and includes the stations of Madison, Stallings, Glen Carbon, Leclaire, Edwardsville, White (Town of Alhambra), New Douglas, and Sorento.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. 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).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by February 3, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following 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 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 27, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–290 (Sub-No. 203X) 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) James R. Paschall, Three Commercial Place, Norfolk, VA 23510–2191. Replies to the NSR petition are due on or before November 27, 1998.

[2] NSR indicates that the end point of the branch line at Sorento has been shown on its system diagram map as milepost TS–444.2 rather than TS–445.7. NSR requests an exemption or waiver from the requirement that it list the 1.5 miles of the line between those mileposts on its system diagram map. Because NSR has provided no reasons for the Board to grant either exemption or waiver here, the request will not be granted. It should be noted, however, that failure to comply with 49 U.S.C. 10903(c)(2) is not grounds for denial of this abandonment petition.

Persons seeking further information concerning abandonment 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 these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV.''

Decided: November 2, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–29825 Filed 11–5–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 11–02]

Delegation of Authority for Administering the Community Development Financial Institutions Fund

1. *Delegation*. a. Pursuant to Treasury Order (TO) 101–20, this Directive delegates to the Director, Community Development Financial Institutions Fund, all duties, powers, rights, and obligations vested by TO 101–20 in the Under Secretary (Domestic Finance) for purposes of administering the Community Development Financial Institutions Fund, a wholly owned government corporation within the Department of the Treasury.

b. The Director, Community Development Financial Institutions Fund, is designated as an officer of the Community Development Financial Institutions Fund pursuant to section 104(b)(3) of the Community Development Banking and Financial Institutions Act of 1994, subtitle A of title I of the Riegle Community Development and Regulatory Improvement Action of 1994, Pub. L. 103–325 (12 U.S.C. 4703 (b)(3)).

2. The Director, Community Development Financial Institutions Fund, shall report to the Under Secretary (Domestic Finance).

3. The Director, Community Development Financial Institutions Fund, may redelegate in writing to officers of the Community Development Financial Institutions Fund such of the authority granted under this Directive as the Director deems appropriate. For purposes of such redelegation of authority, the Director, Community Development Financial Institutions Fund, may designate as officers, in writing, such individuals as the Director deems appropriate.

4. *Authority*. TO 101–20, ''Administering the Community Development Financial Institutions Fund,'' dated August 14, 1995.

5. *Expiration Date*. This Directive shall expire three years from the date of issuance unless superseded or canceled prior to that date.

6. *Office of Primary Interest*. Office of the Under Secretary (Domestic Finance).

John D. Hawke, Jr.,

Under Secretary (Domestic Finance).

[FR Doc. 98–29721 Filed 11–5–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

[Treasury Order Number 145–10]

Remission or Waiver of Liquidated Damages

Dated: October 29, 1998.

1. By virtue of authority vested in the Secretary of the Treasury, including the authority in 31 U.S.C. § 321(b), I hereby delegate to the Commissioner, Financial Management Service, (the ''Commissioner''), the authority of the Secretary:

a. upon a recommendation from the head of a contracting agency, to remit or waive all or part, as in his discretion may be just and equitable, of liquidated damages for delay assessed against a contractor, in conformity with provisions of 10 U.S.C. § 2312 or 41 U.S.C. § 256a; and

b. to exercise any right or power, make any finding or determination, or perform any duty or obligation which the Secretary is authorized to exercise, make or perform under 10 U.S.C. § 2312 and 41 U.S.C. § 256a.

2. The authority delegated to the Commissioner by paragraph 1 further includes any matter in which the Secretary's authority to remit or waive liquidated damages under the cited

statutes is premised upon the delegation to the Secretary from the Acting Director, Office of Management and Budget, set forth in the Acting Director's ''Determination with Respect to Transfer of Functions Pursuant to Public Law 104–53,'' dated June 28, 1996.

3. The Commissioner may redelegate in writing within the Financial Management Service the authority delegated by this order.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 98–29722 Filed 11–5–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Federal Firearms and Ammunition Excise Tax Return.

DATES: Written comments should be received on or before January 5, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Ruhf, Revenue Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Federal Firearms and Ammunition Excise Tax Return.

OMB Number: 1512–0507.

Form Number: ATF F 5300.26.

Abstract: A Federal excise tax is imposed by 26 U.S.C. 4181 on the sale of pistols and revolvers, other firearms, shells and cartridges (ammunition) sold by firearms manufacturers, producers, and importers. The information on the form is necessary to establish the taxpayer's identity, the amount and type of taxes due, and the amount of payments made.

Current Actions: There is an increase in the number of respondents resulting in an increase in burden hours. Also, the form has a few minor changes. A check box has been added to 1. for the address and the wording has been changed to help clarify 3.

Type of Review: Extension.

Affected Public: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 965.

Estimated Time Per Respondent: 7 hours.

Estimated Total Annual Burden Hours: 27,020 .

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 29, 1998.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 98–29744 Filed 11–5–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Gang Resistance Education and Training Funding Application.

DATES: Written comments should be received on or before January 5, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to James Scott, Gang Resistance Education and Training, P.O. Box 50414, Washington, DC 20091, (800) 726–7070.

SUPPLEMENTARY INFORMATION:

Title: Gang Resistance Education and Training Funding Application.

OMB Number: 1512–0548.

Form Number: ATF F 6410.1.

Abstract: State and local law enforcement agencies desiring financial assistance for the G.R.E.A.T. Program will submit ATF F 6410.1 to the ATF, G.R.E.A.T. Branch. The information collected will be used by ATF to evaluate the applicants' funding needed. The information will also be used to determine funding priorities and levels of funding, as required by law.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 400.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 800.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity

of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 29, 1998.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 98–29745 Filed 11–5–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Customs Service

Notice of Issuance of Final Determination Concerning Surgical Instruments

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that Customs has issued a final determination concerning the country of origin of certain surgical instruments which are being offered to the Department of Veterans Affairs under a Federal Supply contract. The final determination found that based upon the facts presented, the country of origin of the surgical instruments is Germany.

DATES: The final determination was issued on November 2, 1998. A copy of the final determination will be published in ''Customs Bulletin and Decisions.'' Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Special Classification and Marking Branch, Office of Regulations and Rulings (202–927–1675).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on November 2, 1998, pursuant to Subpart B of Part 177, Customs Regulations (19 CFR Part 177, Subpart B), Customs issued a final determination concerning the country of origin of certain surgical instruments which are being offered to the Department of Veterans Affairs under a Federal Supply contract. This final determination was issued at the request of one of the offerors under procedures set forth at 19 CFR Part 177, Subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). The final determination concluded that, based upon the facts presented, German surgical instrument forgings are not substantially transformed in Malaysia as a result of various machining and some assembly processes. Accordingly, the country of origin of the surgical instruments is Germany. This document gives notice pursuant to section 177.29, Customs Regulations (19 CFR 177.29), of that final determination. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of November 6, 1998.

Dated: November 2, 1998.

John Durant,

Acting Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 98–29774 Filed 11–5–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T. D. 98–85]

Annual User Fee for Customs Broker Permit; General Notice

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of due date for broker user fee.

SUMMARY: This is to advise Customs brokers that for 1999 the annual user fee of $125 that is assessed for each permit held by an individual, partnership, association or corporate broker is due by January 8, 1999. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Due date for fee: January 8, 1999.

FOR FURTHER INFORMATION CONTACT: Adline Tatum, Entry & Broker Compliance (202) 927–0380.

SUPPLEMENTARY INFORMATION: Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) established that an annual user fee of $125 is to be assessed for each Customs broker permit held by an individual, partnership, association, or corporation. This fee is set forth in the Customs Regulations in § 111.96 (19 CFR Part 111.96).

Customs Regulations provides that this fee is payable for each calendar year in each Broker district where the broker was issued a permit to do business by the due date which will be published in the **Federal Register** annually. Broker districts are defined in the General Notice published in the **Federal Register**, Volume 60, No.187, September 27, 1995 (60 FR 49971).

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99–514), provides that notices of the date on which a payment is due of the user fee for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** by no later than 60 days before such due date. This document notifies brokers that for 1999, the due date for payment of the user fee is January 8, 1999. It is expected that annual user fees for brokers for subsequent years will be due on or about the third of January of each year.

Dated: November 3, 1998.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 98–29773 Filed 11–5–98; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: ''Pieter de Hooch, 1629–1684''

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects on the list specified below, to be included in the exhibit, ''Pieter de Hooch, 1629–1684,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Wadsworth Atheneum, in Hartford, Connecticut, from on or about December 17, 1998, to on or about February 27, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carol Epstein, Assistant General Counsel, Office of the General Counsel, 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: November 2, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–29738 Filed 11–5–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination: ''Project 66: Campana/Ingo Maurer''

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Project 66: Campana/Ingo Maurer,'' imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed objects at The Museum of Modern Art, New York, New York, from on or about November 27, 1998, to on or about January 19, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Neila Sheahan, Assistant General Counsel, Office of the General Counsel, 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

Dated: November 2, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–29737 Filed 11–5–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Summer Institutes in American Studies for Foreign University Teachers; Request for Proposals (RFP)

SUMMARY: The Branch for the Study of the United States of the U.S. Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for four (4) assistance awards. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(C) may apply to develop and implement one of the following four post-graduate level American Studies programs designed for multinational groups of 18 experienced foreign university faculty:

1. Summer Institute on Contemporary American Literature
2. Summer Institute on Change and Reform in American History
3. Summer Institute on the Foundations of U.S. Foreign Policy
4. Summer Institute on the U.S. Constitution

These programs are intended to provide participants with a deeper understanding of American life and institutions, past and present, in order to promote the development and improvement of courses and teaching about the United States at universities abroad.

Program are six weeks in length, and will be conducted during the Summer of 1999.

USIA is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other non-for-profit academic organizations that have an established reputation in one or more of the following fields: political science, international relations, law, history, sociology, literature, American studies, and/or other disciplines or sub-disciplines related to the program theme. Applicant institutions must demonstrate expertise in conducting post-graduate programs for foreign educators, and *must have a minimum of four years experience in conducting international exchange programs.* The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the fields listed above. Staff escorts traveling under the USIA cooperative agreement must have demonstrated qualifications for this service.

Programs must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA programs are subject to the availability of funds.

Program Information

Overview and Objectives: The ''Summer Institutes in American Studies'' are intended to offer foreign scholars and teachers whose professional work focuses on the United States the opportunity to deepen their understanding of American institutions and culture. Their ultimate goal is to improve curricula and the quality of teaching about the U.S. in universities abroad.

Program should be six weeks in length, must include an academic residency segment of at least four weeks at a U.S. college or university campus (or other appropriate location), and a study tour segment of not more than two weeks which directly complements the academic program and includes visits to one or more additional regions of the United States.

All institutes should be designated as intensive academically rigorous programs that are organized through an integrated series of lectures, readings, seminar discussions, research and independent study opportunities, faculty consultations, site visits and regional travel.

Institutions submitting proposals are encouraged to design thematically coherent programs in ways that draw upon the particular strengths and resources of their institutions as well as upon the nationally recognized expertise of scholars and other experts throughout the United States. Within the limits of the program's thematic focus and organizing frameworks, proposals should also be designed to:

A. Provide participants with a survey of current scholarship and scholarly trends within the institute's governing academic discipline, indicating how current academic practice and debate represent both a continuation of and, where appropriate, a departure from past practices within that discipline;

B. Bring an interdisciplinary or multi disciplinary approach to bear on the subject when appropriate;

C. Give participants a multi-dimensional view of U.S. society and institutions that reflects a board range of perspectives, including the views of scholars and of experts outside the university, such as government officials, public intellectuals and cultural critics, journalists, and other relevant professionals; and,

D. Insure access to extensive bibliographic and materials resources that will enable grantees to continue their research, study and curriculum development after returning to their home institutions.

Program Description

1. Summer Institute on Contemporary American Literature (E/AES–99–01)

This institute should survey contemporary American literature and criticism, examining how major writers, schools and movements have both continued in the tradition of the American literary canon, and at the same time established new directions for American literature. Program may be organized thematically, historically, by

genre, or by any combination thereof that serves to suggest the variety, richness and complexity of contemporary American writing.

2. Summer Institute on Change and Reform in American History (E/AEA–99–02)

This institute should examine the history of reform in the United States from the Colonial period to the present. Attention should be given to major periods (e.g., 1830s, 1890s, 1930s), themes (e.g., abolition, women's rights, civil rights) and leading figures and to the larger political, social and economic currents that contributed to and were in turn affected by the various reform movements examined. Attention should also be given to the literature that posits recurring patterns of reform in American life as a way of understanding American institutions generally.

3. Summer Institute on the Foundations of U.S. Foreign Policy (E/AES–99–03)

This institute should examine the foundations—political, social, economic and cultural—of U.S. foreign policy in the Post-Cold War era. Principal themes, critical policy debates and contemporary issues should be examined within the historical context of U.S. international relations since World War II and within the larger framework of U.S. diplomatic history as a whole. The program should be structured to give attention to U.S. policies both in a global context and in major geographic areas.

4. Summer Institute on the U.S. Constitution (E/AES–99–04)

This institute should examine the U.S. Constitution in terms of its origins, its historical evolutions and its significance in contemporary American life. The program should examine the Constitution in terms of its fundamental political principles—federalism, republicanism, checks and balances, separation of powers, individual rights—and also in terms of how the Constitution has served as a defining text through which the central values of American society and institutions have been defined and redefined throughout American history.

Program Dates: Tentative program dates are June 26 to August 6, 1999. Based on these dates, participants would be booked to arrive in the U.S. on or about June 25, and depart on August 7, 1999. USIA is willing to consider adjustment of these program dates, based on the needs of the host institution. However, the institute must be 42 program days in length, and should take place sometime between June 12 and August 28, 1999.

Participants: programs should be designed for a total of 18 highly-motivated and experienced foreign university faculty who are interested in participating in an intensive seminar on aspects of U.S. civilization as a means to develop or improve courses and teaching about the United States at their home institutions. Most participants can be expected to come from educational institutions where the study of the U.S. is relatively well-developed. Thus, while they may not have in-depth knowledge of the particular institute program theme, most will have had some experience in teaching about the United States. Many will have had sustained professional contact with American scholars and American scholarship, and some may have had substantial prior experience studying in the U.S. Participants will be drawn from all regions of the world and will be fluent in English.

Participants will be nominated by U.S. Information Service posts abroad, and selected by the staff of USIA's Branch of the Study of the United States in Washington, DC. USIA will cover all international travel costs directly.

Program Guidelines: The conception, structure and content of the institute program is entirely the responsibility of the organizers. However, given the multiple possibilities for the successful design of such a program, organizers are expected to submit proposals that articulate in concrete detail how they intend to organize and implement the institute.

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further details on program design and implementation, as well as additional information on all other requirements.

Budget Guidelines: Unless special circumstances warrant, based on a group of 18 participants, the total USIA-funded budget (program and administrative) should not exceed $170,000, and USIA-funded administrative costs as defined in the budget details section of the solicitation package should not exceed $51,000. Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Any grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Applicant proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the ''POGI'' in the Solicitation Package for complete budget guidelines and formatting instructions for the institute program.

Announcement Name and Number: All communications with USIA concerning this announcement should refer to the following titles and reference numbers:

1. Summer Institute on Contemporary American Literature (E/AES–99–01)

2. Summer Institute on Change and Reform in American History (E/AES–99–02)

3. Summer Institute on the Foundations of U.S. Foreign Policy (E/AES–99–03)

4. Summer Institute on the U.S. Constitution (E/AES–99–04)

FOR FURTHER INFORMATION: To request a Solicitation Package containing more detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation, applicants should contact: U.S. Information Agency, Office of Academic Programs, Branch of the Study of the United States, E/AES—Room 252, 301 4th Street, S.W., Washington, D.C. 20547, Attention: Richard Taylor, Telephone number: (202) 619–4557, Fax number: (202) 619–6790, Internet address: rtaylor@usia.gov.

Please specify USIA Program Officer Richard Taylor on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFP deadline has passed, USIA staff may not discuss this competition in any way with applicants until after the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://www/usia/gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax on Demand

The entire Solicitation Package may be required from the Bureau's Grants Information Fax on Demand System,'' which is accessed by calling 202/401–7616/ The ''Table of Contents'' listing available documents and order numbers

should be the first order when entering the system.

Deadline for Proposals: All proposal copies must be received at the U.S. Information Agency by 5:00 p.m. Washington D.C. time on Friday, January 29, 1999. Faxed documents will not be accepted, nor will documents postmarked January 29, 1999 but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline.

Submissions: Applicants must follow all instructions in the Solicitation Package. The original and 13 copies of the complete application should be sent to: U.S. Information Agency, Reference: (insert appropriate reference number from above, e.g. E/AES–99–xx), Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants should also submit the ''Executive Summary'' and Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement): The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program-specific requirements, including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Service Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process: USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Geographic Area Offices. Eligible proposals will then be forwarded to panels of senior USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of the USIA Associated Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria: Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered, and all carry equal weight in the proposal evaluation:

1. Overall Quality: Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the debates within the subject discipline of each institute. Program should reflect an overall design whose various elements are coherently and thoughtfully integrated. Lectures, panels, field visits and readings, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of the American experience as well as the diversity and dynamism inherent in it.

2. Program Planning: Proposals should demonstrate careful planning. The organization and structure of the institute should be clearly delineated and be fully responsive to all program objectives. A program syllabus (noting specific sessions and topical readings supporting each academic unit) should be included, as should a calendar of activities. The travel component should not simply be a tour, but should be an integral and substantive part of the program, reinforcing and complementing the academic segment.

3. Institutional Capacity: Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and media resources should be accessible to participants; housing, transportation and other logistical arrangements should be fully adequate to the needs of participants and should be conducive to a collegial atmosphere.

4. Support for Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. Experience: The proposal should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators.

6. Evaluation and Follow-up: The proposal should include a plan for evaluating activities during the Institute and at its conclusion. Proposals should comment on provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. Administration and Management: The proposals should indicate evidence of continuous on-site administrative and managerial capacity as well as the means by which program activities will be implemented.

8. Cost Effectiveness: The proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual

understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

Notice: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification: Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal USIA procedures.

Dated: October 30, 1998.

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–29717 Filed 11–5–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

DATE/TIME: Thursday, November 19, 1998, 9:00 a.m.–5:30 p.m.

LOCATION: 1200 17th Street, NW, Suite 200—Conference Room, Washington, DC 20036.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: November 1998 Board Meeting; Approval of Minutes of the Eighty-Sixth Meeting (September 17, 1998) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Reports on Fiscal Years 1999 and 2000 Budgets; Other General Issues.

CONTACT: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: November 4, 1998.

Charles E. Nelson,

Vice President for Management and Finance, United States Institute of Peace.

[FR Doc. 98–29947 Filed 11–4–98; 1:33 pm]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0216]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the appropriate claimant eligible for accrued benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 5, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0216'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 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. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Application for Reimbursement from Accrued Amounts Due a Deceased Beneficiary, VA Form 21–601.

OMB Control Number: 2900–0216.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used to file a claim for accrued benefits available at the time of the veteran's death. The information is used by the Veterans Benefits Administration to determine the appropriate claimant eligible for accrued benefits.

Affected Public: Individuals or households—Business or other for-profit.

Estimated Annual Burden: 1,875 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time for most beneficiaries.

Estimated Number of Respondents: 3,750.

Dated: October 8, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–29839 Filed 11–5–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Performance Review Board Members

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This notice revises the list of members of the Department of Veterans Affairs (VA) Performance Review Boards which was published in the **Federal Register** on October 15, 1997 (62 FR 53686).

EFFECTIVE DATE: November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Angel I. Wolfrey, Office of Human Resources Management (052B), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–4940.

VA Performance Review Board (PRB)

Eugene A. Brickhouse, Assistant Secretary for Human Resources and Administration (Chairperson)
Nora E. Egan, Deputy Under Secretary for Management, Veterans Benefits Administration
John H. Thompson, Deputy General Counsel
Thomas L. Garthwaite, M.D., Deputy Under Secretary for Health
Nancy M. Valentine, Ph.D., Chief Consultant, Nursing Strategic Healthcare Group Veterans Health Administration
Ventris C. Gibson, Deputy Assistant Secretary for Resolution Management
John T. Hanson, Deputy Assistant Secretary for Intergovernmental Affairs
Sheila C. McCready, Principal Deputy Assistant Secretary for Congressional Affairs
William T. Merriman, Deputy Inspector General
Alma B. Moore, Deputy Director, National Cemetery System
Roger R. Rapp, Director, Field Operations, National Cemetery System
Patrick Nappi, Deputy Under Secretary for Operations, Veterans Benefits Administration (Alternate)
Kenneth J. Clark, Chief Network Officer, Veterans Health Administration (Alternate)
Gerald K. Hinch, Deputy Assistant Secretary for Equal Opportunity (Alternate)
Vincent L. Barile, Director, Operations Support, National Cemetery System (Alternate)

Veterans Benefits Administration PRB

Nora E. Egan, Deputy Under Secretary for Management (Chairperson)
Montgomery D. Watson, Special Assistant for Field Operations
Michael Walcoff, Special Assistant for Benefits Programs
Celia P. Dollarhide, Director, Education Service
Newell E. Quinton, Chief Information Officer
Keith R. Pedigo, Director, Loan Guaranty Service
Sheila C. McCready, Principal Deputy Assistant Secretary for Congressional Affairs
Nancy M. Valentine, PhD., Chief Consultant, Nursing Strategic Healthcare Group, Veterans Health Administration

Veterans Health Administration PRB

Thomas L. Garthwaite, M.D., Deputy Under Secretary for Health (Chairperson)
Kenneth J. Clark, Chief Network Officer (Co-Chairperson)
R. David Albinson, Chief Information Officer
Terrence S. Batliner, D.D.S., Chief Network Director, VISN 19
Linda W. Belton, Network Director, VISN 11
Lawrence A. Biro, Network Director, VISN 4
Vernon Chong, M.D., Network Director, VISN 17
Patricia A. Crosetti, Network Director, VISN 15
Joan E. Cummings, M.D., Network Director, VISN 12
John Dandridge, Jr., Network Director, VISN 9
Larry R. Deal, Network Director, VISN 7
Jim W. Delgado, Director, Voluntary Service Office
James J. Farsetta, Network Director, VISN 3
Denis J. Fitzgerald, M.D., Network Director, VISN 1
William T. Galey, M.D., Network Director, VISN 20
W. Todd Grams, Chief Financial Officer
Leroy P. Gross, M.D., Network Director, VISN 6
John R. Higgins, M.D., Network Director, VISN 16
Thomas J. Hogan, Director, Management Support Office (Ex Officio)
Thomas V. Holohan, M.D., Chief Patient Care Services Officer
Thomas B. Horvath, M.D., Chief Consultant, Mental Health Strategic Healthcare Group
Smith Jenkins, Jr., Network Director, VISN 22
Frederick L. Malphurs, Network Director, VISN 2
Laura J. Miller, Network Director, VISN 10
Vincent W. Ng, Network Director, VISN 14
Robyn Nishimi, Ph.D., VHA Chief of Staff
James J. Nocks, M.D., Network Director, VISN 5
Gregg Pane, M.D., M.P.A., Chief Policy and Planning Officer
Robert A. Petzel, M.D., Network Director, VISN 13
Robert H. Roswell, M.D., Network Director, VISN 8
Thomas A. Trujillo, Network Director, VISN 18
Robert L. Wiebe, M.D., Network Director, VISN 21
Sheila C. McCready, Principal Deputy Assistant Secretary for Congressional Affairs
Alma B. Moore, Deputy Director, National Cemetery System

Office of Inspector General PRB

David A. Brinkman, Director, Audit Followup Directorate, Department of Defense (Chairperson)
Nancy Hendricks, Assistant Inspector General for Audit, Federal Emergency Management Agency
George Grob, Deputy Inspector General for Evaluation and Inspections, Department of Health and Human Services

Dated: October 28, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 98–29840 Filed 11–5–98; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 63, No. 215

Friday, November 6, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 200

Organization, Functions, and Procedures; Freedom of Information Act

Correction

In rule document 98–26813, beginning on page 53811, in the issue of Wednesday, October 7, 1998, make the following corrections:

1. On page 53811, in the first column, under the heading **EFFECTIVE DATE:**, in the second line, ''October 1, 1998'' should read ''October 7, 1998''

§ 200.8 [Corrected]

2. On page 53812, in the first column, in §200.8 (a), in the first line, ''form'' should read ''from''.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Announcement of Minerals Management Service Meeting on Naurtal Gas Royalty-in-Kind Pilot Program in the Federal Gulf of Mexico Region

Correction

In notice document 98–28910 appearing on page 57703 in the issue of Wednesday, October 28, 1998, make the following correction:

On page 57703, in the third column, in the first line, ''communication/unit'' should read ''communitization/unit''.

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

Correction

In notice document 98–28881 beginning on page 57280, in the issue of Tuesday, October 27, 1998, in the third column, the agency name should read as set forth above.

BILLING CODE 1505-01-D

Friday
November 6, 1998

Part II

Department of Transportation

Federal Transit Administration

FTA Fiscal Year 1999 Apportionments, Allocations and Program Information; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 1999 Apportionments, Allocations and Program Information

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Omnibus Consolidated and Emergency Supplemental Appropriations Act, Fiscal Year 1999 includes Appropriations for Department of Transportation (DOT) and Related Agencies for fiscal year 1999 (Pub. L. 105–277), signed into law by President Clinton on October 21, 1998, and provides fiscal year 1999 appropriations for the Federal Transit Administration (FTA) transit assistance programs. Based upon this Act, the Transportation Equity Act for the 21st Century (TEA–21), and 49 U.S.C. Chapter 53, this Notice contains a comprehensive list of apportionments and allocations of the various transit programs.

This Notice includes the apportionment of fiscal year 1999 funds in the 1999 Omnibus Appropriations Act for the Metropolitan Planning Program and State Planning and Research Program, the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, the Elderly and Persons with Disabilities Program, the Rural Transit Assistance Program, and the Capital Program for Fixed Guideway Modernization. This Notice also contains the allocations of funds for the New Starts and Bus categories under the Capital Program in the 1999 Omnibus Appropriations Act. Also it contains general information about new programs established under TEA–21: the Clean Fuels Formula Program, the Over-the-Road Bus Accessibility Program, the Job Access and Reverse Commute Program, and the Transportation and Community and System Preservation Pilot Program.

Information regarding TEA–21 funding authorization levels for use in developing Metropolitan Transportation Improvement Programs (TIPS) and State Transportation Improvement Programs (STIP) is also included. For informational purposes, this Notice contains the apportionment of fiscal year 1999 funds for the Federal Highway Administration (FHWA) Metropolitan Planning Program and the estimated apportionment of the fiscal year 1999 State Planning and Research Program.

Included in this Notice is a listing of prior year unobligated allocations for the Section 5309 New Starts and Bus Programs as in previous year notices. In addition, the FTA policy regarding pre-award authority to incur project costs, the Letter of No Prejudice Policy, as well as other pertinent program information is included.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant-specific information and issues; Patricia Levine, Director, Office of Resource Management and State Programs, (202) 366–2053, for general information about the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, the Elderly and Persons with Disabilities Program, the Rural Transit Assistance Program, the Clean Fuels Formula Program, the Over-the-Road Bus Accessibility Program, or the Capital Program; or Robert Stout, Director, Office of Planning Operations, (202) 366–6385, for general information concerning the Metropolitan Planning Program, the State Planning and Research Program, and the Transportation and Community and System Preservation Pilot Program.

SUPPLEMENTARY INFORMATION:

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3. FHWA Fiscal Year 1999 Apportionment for the Metropolitan Planning Program and Estimated Fiscal Year 1999 Apportionment for the State Planning and Research Program
4. FTA Fiscal Year 1999 Section 5307 Urbanized Area Formula Apportionments
5. FTA Fiscal Year 1999 Section 5311 Nonurbanized Area Formula Apportionments, and Section 5311(b) Rural Transit Assistance Program (RTAP) Allocations
6. FTA Fiscal Year 1999 Section 5310 Elderly and Persons With Disabilities Apportionments
7. FTA Fiscal Year 1999 Section 5309 Fixed Guideway Modernization Apportionments
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11. FTA Fiscal Years 1999–2003 Apportionment Formula for Section 5307 Urbanized Area Formula Program
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13. Unit Values of Data—FTA FY 1999 Formula Grant Apportionments

I. Background

Metropolitan Planning funds are apportioned by a statutory formula to the Governors for allocation by them to Metropolitan Planning Organizations (MPOs) in urbanized areas or portions thereof. State Planning and Research funds also are apportioned to states by a statutory formula. Urbanized Area Formula Program funds are apportioned by statutory formula to urbanized areas and to the Governors to provide capital, operating and planning assistance in urbanized areas. Nonurbanized Area Formula Program funds are apportioned by statutory formula to the Governors for capital, operating and administrative assistance in nonurbanized areas. The Elderly and Persons with Disabilities Program funds are apportioned by statutory formula to the Governors to provide capital assistance to organizations providing transportation service for the elderly and persons with disabilities. Fixed Guideway Modernization funds are apportioned by statutory formula to specified urbanized areas for capital improvements in rail and other fixed guideways. New Start and Bus funds identified in the Omnibus Appropriations Act are also included in this Notice.

II. Overview of Appropriations for Grant Programs

A. General

The fiscal year 1999 appropriations for the FTA program is $5,390,000,000, the guaranteed funding level under TEA–21, plus an additional $25,000,000 above the guaranteed level to support the Administration's proposed and TEA–21 adopted Job Access and Reverse Commute Program.

In fiscal year 1999, the appropriation for the Metropolitan Planning Program is $43,841,600 and $9,158,400 for the State Planning and Research Program. The appropriation for formula grants totals $2,850,000,000. Under statutory authority, the distribution of the total formula funds available is as follows: $4,849,950 is set aside for the Alaska Railroad, $50,000,000 for the Clean Fuels Formula Program is transferred to the Capital Investment Bus program, and $2,000,000 is for the Over-the-Road Bus Accessibility Program. Of the remaining amount of $2,793,150,050, 91.23 percent ($2,548,190,791) is made available to the Urbanized Area Formula Program, 6.37 percent ($177,923,658) is made available to the Nonurbanized Area Formula Program, and 2.4 percent ($67,035,601) is made available to the Elderly and Persons with Disabilities Program.

The other program appropriations contained in this Notice are as follows: $5,250,000 for the Rural Transit Assistance Program (RTAP); and $2,257,000,000 for the Capital Program. Of the Capital Program amount, $902,800,000 is for Fixed Guideway Modernization, $902,800,000 is for New Starts, and $451,400,000 is for Bus Capital. In addition, $50,000,000 of formula funds for Clean Fuels was transferred to and merged with the Bus Capital Program increasing that program to $501,400,000. $75,000,000 is for the Job Access and Reverse Commute Program.

Table 1 displays the amounts appropriated for these programs, including adjustments and final apportionment and allocation amounts. The following text provides a narrative explanation for the funding levels and other factors affecting these apportionments and allocations.

B. TEA–21 Authorized Program Levels

TEA–21 provides a combination of trust and general fund authorizations that total $6,542,000,000 for fiscal year 1999 FTA program. Of this amount, $5,365,000,000 is guaranteed under the discretionary spending cap. See Table 9 for fiscal years 1998–2003 guaranteed fund levels by program, and Table 9A for the total of guaranteed and non-guaranteed levels by program.

Information regarding estimates of the fundings levels for 1999–2003 by state and urbanized area is available on the FTA home page at www.fta.dot.gov. These numbers are for planning purposes only as they will be revised in the future but may be used for programming metropolitan transportation improvement programs and statewide transportation improvement programs.

C. Project Management Oversight

49 U.S.C. Section 5327 allows the Secretary of Transportation to use not more than one-half percent of the funds made available under the Urbanized Area Formula Program, the Nonurbanized Area Formula Program; the National Capital Transportation Act, as 1 amended; and three-quarters percent of funds made available under the Capital Program to contract with any person to oversee the construction of any major project under these statutory programs; to conduct safety, procurement, management and financial reviews and audits; and to provide technical assistance to correct deficiencies identified in compliance reviews and audits. Therefore, one-half percent of the funds appropriated for the Urbanized Area Formula Program, the Nonurbanized Area Formula Program and the National Capital Transportation Act, as amended, for fiscal year 1999, and three-quarters percent of Capital Program funds have been reserved for these purposes before apportionment of funds.

III. Outreach

A. FTA-Sponsored TEA–21 Listening Sessions

Over a thirty-day period that began in early September of 1998, the FTA conducted eight listening sessions for its customers and constituents. Sessions were held in Dallas, Portland, San Francisco, Atlanta, Kansas City, Chicago, Philadelphia, and New York.

The sessions were designed to allow FTA leadership and staff to hear the concerns and issues that people had with respect to the implementation of TEA–21. The overwhelming majority of people who spoke during the sessions asked questions about new provisions, implementation schedules and funding levels. The principal issues in all of the

sessions were changes in the New Start evaluation process, the new preventive maintenance provision, and the three new programs: Job Access and Reverse Commute; Clean Fuel Formula; and Over-the-Road Bus Accessibility.

B. Revised Program Guidance Circulars

To incorporate changes introduced in TEA–21, FTA has issued revised program guidance circulars. New circulars, which are all effective October 1, 1998, include C9030.1C, Urbanized Area Formula Program: Grant Application Instructions; C9040.1E, Nonurbanized Area Formula Program Guidance and Grant Application Instructions; C9070.1E, Elderly and Persons with Disabilities Program Guidance and Grant Application Instructions; C9300.1A, Capital Program: Grant Application Instructions; and C5010.1C, Grant Management Guidelines.

IV. Emphasis Areas

A. Americans With Disabilities Act Compliance

With eight years since the passage of the Americans with Disabilities Act (ADA), compliance with all aspects of ADA is one of FTA's highest priorities. FTA will continue to focus on grantees' compliance with ADA. Several grantees have entered into voluntary compliance agreements (VCAs) which represent their commitment to come into full compliance. FTA will continue to monitor the milestones in the VCAs and expects the grantees to meet them.

TEA–21 and the fiscal year 1999 Omnibus Appropriations Act provide unprecedented levels of funding for public transportation and these increased funds should be utilized to ensure speedy and full compliance with all aspects of the ADA.

Grantees that may have difficulties with ADA compliance should contact their FTA regional office as soon as they are aware of any problems.

B. National ITS Architecture and Standards Requirements

Section 5206(e) of TEA–21 requires that Intelligent Transportation Systems (ITS) projects using funds from the Highway Trust Fund (including the Mass Transit Account) conform to the National ITS Architecture and Standards. Interim guidance on conformity with National ITS Performance Standards was issued October 2, 1998 jointly by FTA and FHWA. This document provides guidance for meeting this provision of TEA–21 and is available from the FTA regional office or on the internet at www.its.dot.gov. These standards and requirements apply to fiscal year 1999 bus allocations included in this notice which contain ITS components.

Questions regarding the applicability of these standards and requirements should be addressed to the FTA regional office or Ronald Boenau, FTA Office of Research, Demonstration and Innovation at (202) 366–0195.

V. Transportation Electronic Awards and Management System

A. Background

The FTA Grants Management Information System (GMIS) became operational 10 years ago. In 1994 FTA began the Electronic Grant Making and Management (EGMM) initiative. The EGMM program is a paperless electronic grant application, review, approval, acceptance and management process. This program started as a pilot effort and involved 20 grantees nationwide who served as pilots. By fiscal year 1998, 191 grantees were participating in the FTA EGMM program. Over 800 grantees were on line for various management activities such as filing of financial and narrative status reports. In addition, grantees could use EGMM for the electronic signature of annual certifications and assurances. During the assessment of the GMIS, FTA became aware that the GMIS was not Year 2000 compliant.

B. Transportation Electronic Awards and Management System (TEAM)

On November 2, 1998, FTA will introduce its third generation of electronic enhancements when the Transportation Electronic Awards and Management System, the TEAM system, becomes operational. This will make FTA's mission critical grant management systems Year 2000 compliant, and the FTA grant delivery process will not be interrupted. The TEAM system utilizes graphical user interface (GUI) technology providing point and click ''Smart'' selections that aid the grant recipients with their business process for submitting applications and management reporting.

During fiscal year 1999, the TEAM system will use a dual grant numbering system which includes the current system and one that reflects the codification of Federal transit laws. For example, a current number may be NY–90–X321; the new number would be NY–5307–0321. Starting with fiscal year 2000, only the numbers reflecting the codification will be used.

FTA outreach to the industry has been extensive and thorough. FTA personnel have traveled to 30 cities to conduct hands-on training sessions, which have attracted over 1,200 transit industry professionals—with more sessions underway until everyone who uses FTA programs can access the TEAM system. On September 30, 1998, FTA began distributing the TEAM system software to grantees at no charge and expects all grantees to apply for grants electronically in fiscal year 1999.

C. Fiscal Year 1999 Emphasis

In fiscal year 1999 FTA expects grantees to use the TEAM system grantees for grant application and approval, as well as for grant management activities if they have not already done so. FTA also expects all grantees to file the fiscal year 1999 Certifications and Assurances electronically using the TEAM system.

VI. Expanded Definition of Capital

A. Preventive Maintenance

Preventive maintenance, an expense that became eligible for FTA capital assistance for one year with the DOT 1998 Appropriations Act, was established as permanently eligible for FTA capital assistance under TEA–21; therefore, FY 1998 funds and subsequent fiscal year appropriations may be used for preventive maintenance. Preventive maintenance costs are defined as all maintenance costs. For general guidance regarding eligible maintenance costs, the grantee should refer to the definition of maintenance in the most recent National Transit Database reporting manual. A grantee may continue to request assistance for capital expenses under the FTA policies governing associated capital maintenance items (spare parts), vehicle overhaul as 20 percent of maintenance, maintenance of vehicle leased under contract, and vehicle rebuilds (major re-work); or a grantee may choose to capture all maintenance under preventive maintenance. If a grantee purchases service instead of operating service directly, and maintenance is included in the contract for that purchased service, then the grantee may apply for preventive maintenance capital assistance under the capital cost of contracting policy. The capital cost of contracting policy is discussed below.

For accounting purposes, the grantee is cautioned not to confuse the fact that an item generally considered to be an operating expense is eligible for FTA capital assistance. Generally accepted accounting principles and the grantee's accounting system detemine those costs that are to be accounting for as operating costs. The National Transit Database

Reporting System (NTD) follows generally accepted accounting principles, so a grant recipient reporting to the NTD must report the operating costs the grant recipient has incurred as operating costs regardless of its eligibility for FTA capital assistance. Nevertheless, under provisions of TEA–21 and earlier under provision of the fiscal year 1998 Approriations Act, some of those operating costs, while continuing to be accounted for as operating costs in the grant recipient's accounting records, are now eligible for FTA capital assistance. Grantees may not count the same costs twice.

B. ADA Complimentary Paratransit Service

TEA–21 expanded the definition of an eligible capital project to include: ''* * * the provision of nonfixed route paratransit transportation in accordance with Section 223 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12143), but only for grant recipients that are in compliance with the applicable requirements of the Act, including both fixed route and demand responsive service, and only for amounts not to exceed 10 percent of such recipient's annual formula apportionment under sections 5307 and 5311.''

Recipients of formula funds under the Urbanized Area Formula Program and the Nonurbanized Area Formula Program may now use up to 10 percent of their annual formula apportionment to pay for ADA paratransit operating costs. Section 223 of the ADA defines the specific type of paratransit service that is eligible for this new provision which is implemented in Subpart F of the Department of Transportation's ADA regulation, which (at 49 CFR Part 37) explains the ADA paratransit eligibility process, and the service criteria (service area, response time, fares, trip purpose restrictions, hours and days of service and capacity constraints).

a. *ADA Compliance.* Eligibility for using this expanded definition of capital is dependent upon compliance with ADA requirements. Currently, FTA grantees are required to certify compliance with ADA on an annual basis. Non-compliance with ADA is the result of a formal determination by FTA. Transit systems determined as being in non-compliance are not eligible to use this provision. Grantees who do not make satisfactory progress in negotiating voluntary compliance agreements or who do not achieve milestones within signed agreements will lose their eligibility for funds for paratransit operating expenses.

b. *Non-ADA Paratransit.* Operating costs associated with paratransit services which are not required by the ADA are not eligible for this funding option.

c. *Time of Costs Incurred.* FTA reimbursement at the 80 percent Federal share for ADA paratransit costs under this provision must be by means of a grant awarded after June 9, 1998. Eligible costs must have been incurred in a local fiscal year ending after June 9, 1998.

d. *Implementation in UZA's with More than One Grantee.* For those urbanized areas with more than one ADA paratransit provider, it will be the responsibility of the Metropolitan Planning Organization (MPO), working with the transit operators, to program up to 10 percent of the urbanized area's apportionment should it want to utilize this eligibility.

C. Capital Cost of Contracting

Some FTA grantees contract for transit service, for maintenance service, or for vehicles that the grantee will use in transit service. FTA traditionally provides assistance for the capital consumed in the course of the contract. The concept of assisting with capital consumed is referred to as the ''capital cost of contracting.'' FTA provides assistance at the 80/20 FTA/local share ratio for the capital cost of contracting.

To incorporate the fact that preventive maintenance is now an eligible capital cost, FTA has changed the admininstration of the Capital Cost of Contracting policy, effecitive with fiscal year 1998 funds. Preventive maintenance costs are now included within the capital cost of contracting category, along with the capital charges for the use of assets (capital consumed). Consequently, revisions have been made to the schedule of precentages and type of contract used in the past. The new schedule appears in the revised Circular 9030.1C.

VII. Section 5303 Metropolitan Planning Program and Section 5313(b) State Planning and Research Program

A. Metropolitan Planning Program

The fiscal year 1999 Metropolitan Planning apportionment to states for MPOs to be used in urbanized areas totals $43,901,198. This amount includes $43,841,600 in fiscal year 1999 appropriated funds, and $59,598 in prior year deobligated funds which have become available for reallocation for this program. A basic allocation of 80 percent of this amount ($35,120,958) is distributed to the states based on the state's urbanized area population as defined by the U.S. Census Bureau for subsequent state distribution to each urbanized area, or parts thereof, within each state. A supplemental allocation of the remaining 20 percent ($8,780,240) is also provided to the States based on an FTA administrative formula to address planning needs in the larger, more complex urbanized areas. Table 2 contains the final state apportionments for the combined basic and supplemental allocations. Each state, in cooperation with the MPOs, must develop an allocation formula for the combined apportionment which distributes these funds to MPOs representing urbanized areas, or parts thereof, within the State. This formula, which must be approved by the FTA, must ensure to the maximum extent practicable that no MPO is allocated less than the amount it received by administrative formula under the Metropolitan Planning Program in fiscal year 1991 (minimum MPO allocation). Each state formula must include a provision for the minimum MPO allocation. Where the State and MPOs desire to use a new formula not previously approved by FTA, it must be submitted to the appropriate FTA Regional Office for prior approval.

B. State Planning and Research Program

The fiscal year 1999 apportionment for the State Planning and Research Program totals $9,257,248. This amount includes $9,158,400 in fiscal year 1999 appropriated funds, and $98,848 in prior year deobligated funds which have become available for reallocation to this program. Final state apportionments for this program are also contained on Table 2. These funds may be used for a variety of purposes such as planning, technical studies and assistance, demonstrations, management training, and cooperative research. In addition, a state may authorize a portion of these funds to be used to supplement planning funds allocated by the state to its urbanized areas as the state deems appropriate.

C. Data Used for Metropolitan Planning and State Planning and Research Apportionments

Population data from the 1990 Census is used in calculating these apportionments. The Metropolitan Planning funding provided to urbanized areas in each state by administrative formula in fiscal year 1991 was used as a ''hold harmless'' base in calculating funding to each State.

D. FHWA Metropolitan Planning Program and State Planning and Research Program

For informational purposes, the fiscal year 1999 apportionment for the FHWA

Metropolitan Planning Program and estimated apportionment for fiscal year 1999 State Planning and Research Program are contained in Table 3.

E. Local Match Waiver for Job Access Planning Activities

Federal, state, and local welfare reform initiatives may require the development of new and innovative public and other transportation services to ensure that former welfare recipients have adequate mobility for reaching employment opportunities. In recognition of the key role that transportation plays in ensuring the success of welfare-to-work initiatives, FTA and FHWA are continuing the policy established last year to permit waiver of the local match requirement for job access planning activities undertaken with metropolitan Planning Program and State Planning and Research Program funds. FTA and FHWA will support requests for waivers when they are included in metropolitan Unified Planning Work Programs and State Planning and Research Programs and meet all other appropriate requirements.

F. Planning Emphasis Areas

(1) The Concept: The FTA and FHWA have cooperatively developed Planning Emphasis Areas (PEA) for fiscal years 1999 and 2000. Emphasis areas promote priority themes for consideration, as appropriate, in metropolitan and statewide transportation planning processes.

(2) An Emphasis on System Management and Operation: TEA–21 identifies system management and operation as a focal theme and context for transportation investment nationwide. The Conference Report supporting TEA–21 contains language that places high priority on Operations and Management, as indicated by the following excerpt. ''It is in the national interest to encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and through urbanized areas * * *''

TEA–21 identifies seven planning areas to be considered in metropolitan and statewide planning. These include:

(A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

(B) increase the safety and security of the transportation system for motorized and nonmotorized users;

(C) increase the accessibility and mobility options available to people and for freight;

(D) Protect and enhance the enviroment, promote energy conservation, and improve quality of life;

(E) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

(F) promote efficient system management and operation; and

(G) emphasize the preservation of the existing transportation system.

Planning area (F) promotes the consideration of efficient system management and operation in transportation planning processes and recognizes that we cannot always build our way out of congestion but need to better manage and operate the existing system. Many agencies that use a traditional capital intensive, capacity-enhancing programming process to address the area's transportation problems will need to review and revise their planning and programming process to consider system management and operations.

(3) DOT Activities in Support of Management and Operations: FTA and FHWA will work to support metropolitan areas and states in their efforts to incorporate system management and operation strategies in their local planning processes.

DOT is spearheading an effort to develop a collaborative dialogue among a broad range of transportation stakeholders leading to a consenus of the role of management and operations in transportation decision-making. This dialogue would identify customer needs for training and technical assistance. Support for integrated planning and application of Intelligent Transportation Systems (ITS) strategies, including the role of ITS National Architecture, is another effort supporting system management and operation.

(4) Next Steps: FTA and FHWA will be working over the coming months to support further development of the added emphasis on System Management and Operation and outline a comprehensive approach for consideration and use by MPOs.

G. Federal Planning Certification Reviews

Federal certification of the planning process is conducted in a Transportation Management Area (TMA), which is an urbanized area with a population of 200,000 and above or other urbanized areas designated by the Secretary of Transportation (the Secretary). The Secretary is responsible for certifying, at least once every three years, that the metropolitan transportation planning process in the TMA is being carried out under applicable provisions of Federal law.

Dates for site visits for the TMAs to be reviewed in fiscal year 1999 are being established and will be available on the FTA Home Page at http://www.fta.gov/office/planning.

For further information regarding Federal certifications of the planning process contact: For FTA: Mr. Charles Goodman, FTA Metropolitan Planning Division (TPL–12), 202–366–1944; or Scott Biehl, FTA Office of Chief Counsel (TCC–30), 202–366–4063. For FHWA: Mr. Sheldon Edner, FHWA Metropolitan Planning Division (HEP–20), 202–366–4066; or Reid Alsop, FHWA Office of the Chief Counsel (HCC–31), 202–366–1371.

H. Consolidated Planning Grant

In fiscal year 1997, FTA and FHWA began offering states the option of participating in a pilot Consolidated Planning Grant (CPG) program. Eleven states are participating in the pilot so far. Since the first CPG grant was awarded in April 1997, more than $95,000,000 has been obligated by the pilot states. Of this total, more than $69,700,000 is from FHWA sources. Of the eleven participants, nine have completed at least one full year under the pilot. Of the nine, two states have elected to continue the pilot with new, separate CPG grants for the second year. This approach treats the CPG much as FHWA funds are treated currently; that is, as basically annual apportionments with a yearly close-out of project activities and a deobligation and reobligation cycle. Seven states have elected to amend the original CPG grant to add new fiscal year funds to treat the CPG more like an FTA grant, but with even greater flexibility. Under the multi-year approach option, the CPG grant would stay open for a period of years to be determined by the state (and MPO, jointly, for Metropolitan Planning funds) with the approval of the Federal Government. New apportionments can be added by grant amendment as funds become available. The ease with which a state can opt for the single year or the multi-year approach to the CPG grant speaks to the flexibility intended for the program.

One of our original goals in developing the CPG Pilot was to give states and MPOs more control over their planning resources with a combination of broader financial controls and greater flexibility in the management of their planning activities. After more than one full year's experience under the pilot,

FTA's annual review of planning program fund balances and potential lapsing funds revealed that none of the pilot states had funds in danger of lapsing (under FTA's planning programs, funds that are unobligated after four years' time lapse to the state). Further, only two of the eleven pilot states have any FTA planning funds available that were appropriated before fiscal year 1998. As in previous years, pre-award authority is granted to both of FTA's planning programs as part of this annual Notice. This pre-award authority enables states to continue planning program activities from year to year with the assurance that eligible costs can later be converted to a regularly funded Federal project without the need for prior approval or authorization from the granting agency.

This November, FTA will be providing an enhancement to its electronic grant system (TEAM system) that can be used to request planning grants, obligate funds, monitor fund balances and grant status, and file financial and status reports for the CPG. While benefiting all grants, these enhancements are particularly well suited to the very streamlined funding request format of the CPG Pilot. As part of the pilot, FTA will continue to work with participating states to increase the flexibility and further streamline the consolidated approach to planning grants. For further information on participating in the CPG Pilot, contact Ms. Candace Noonan, Intermodal and Statewide Planning Division, FTA, at (202) 366–1648 or Anthony Solury, Metropolitan Planning Division, FHWA, at (202) 366–5003.

I. New Starts Evaluation and Criteria

TEA–21 includes several changes to the evaluation process and criteria for New Starts fixed guideway projects. The Secretary shall consider several additional criteria in the Department's review and evaluation of candidate New Starts projects. FTA will be required to evaluate each project authorized for New Starts funding by each criterion, as well as provide an overall project rating of ''highly recommended,'' ''recommended,'' and ''not recommended.'' In addition to its annual report to Congress on Funding Levels and Allocations of Funds for Transit Major Capital Investments, FTA will be required to issue a supplemental report in August of each year which rates all projects that have completed alternatives analysis and preliminary engineering since the date of the last report. FTA must also approve candidate New Starts project's entry into final design. FTA also continues its prior approval authority for entrance into preliminary engineering.

TEA–21 requires that no less than 92 percent of the annual New Starts program must be used for final design and construction.

FTA will soon issue regulations implementing the New Starts provision of TEA–21.

J. Metropolitan Transportation Improvement Programs (TIPs) and State Transportation Improvement Programs (STIPs)

Both the TIPs and STIPs, major products of the metropolitan and State transportation planning processes, continue to be required under TEA–21 and 23 CFR part 450. TEA–21 has provided new authorization levels as well as new programs for the FTA and FHWA. Development of 3-year TIPs and STIPs requires knowledge of Federal FTA and FHWA funding amounts and sources. With respect to Federal funding sources, ''available'' or ''committed'' funds identified in TIPs and STIPs are to be taken to mean authorized and/or appropriated funds. Authorized amounts for the purposes of TEA–21 include the total of guaranteed and nonguaranteed funding. FTA and FHWA funding amounts and sources for the six years of TEA–21 are provided by State and/or urbanized areas on the Internet at the following locations: (1) FTA, http://www.fta.dot.gov/library/policy/t21toc.htm and (2) FHWA, http://www.fhwa.dot.gov/tea21/98appor.htm.

K. Metropolitan Planning

TEA–21 retains much of the basic structure of the metropolitan and statewide planning process, as established by ISTEA, with a few significant changes. The set of sixteen metropolitan planning factors has been reduced to seven factors: economic vitality; safety and security; accessibility and mobility; environment, energy conservation and quality of life; integration and connectivity; efficient operation and management; and preservation of existing transportation resources. Freight shippers and users of public transit are added to the explicit set of stakeholders to be given opportunities to comment on metropolitan plans and transportation improvement programs (TIPs).

Metropolitan planning organizations (MPOs) may include in their TIPs an ''illustrative'' list of projects that could be implemented if additional resources were made available. MPOs will also be encouraged to coordinate the planning for Federally-funded non-emergency transportation services as part of the metropolitan planning process. FTA and FHWA will be revising the Joint Planning Regulations (23 CFR part 450 and 49 CFR part 613) to formally incorporate changes to the planning program.

VIII. Section 5307 Urbanized Area Formula Program

A. Total Urbanized Area Formula Apportionments

In addition to the appropriated fiscal year 1999 Urbanized Area Formula funds of $2,548,190,791, the apportionment also includes $5,055,703 in deobligated funds which have become available for reapportionment for the Urbanized Area Formula Program as provided by 49 U.S.C. 5336(i).

Table 4 displays the amount apportioned for the Urbanized Area Formula Program. After the one-half percent for oversight is set-aside ($12,740,954), the amount appropriated for this program is $2,543,135,088. The funds to be reapportioned, described in the previous paragraph, have then been added. Thus, the total amount apportioned for this program is $2,540,505,540.

An additional $4,849,950 is appropriated for the Alaska Railroad for improvements to its passenger operations. After the one-half percent for oversight is reserved ($24,250), $4,825,700 is available for the Alaska Railroad.

Table 2 contains the fiscal years 1999–2003 apportionment formula for the Section 5307 Urbanized Area Formula Program.

B. Data Used for Urbanized Area Formula Apportionments

Data from the 1997 NTD (49 U.S.C. 5335) Report Year submitted in late 1997 and early 1998 have been used to calculate the fiscal year 1999 Urbanized Area Formula apportionments for urbanized areas 200,000 in population and over. The population and population density figures used in calculating the Urbanized Area Formula are from the 1990 Census.

C. Adjustments for Energy and Operating Efficiencies

49 U.S.C. 5336(b)(2)(E) provides that, if a recipient of Urbanized Area Formula Program funds demonstrates to the satisfaction of the Secretary that energy or operating efficiencies would be achieved by actions that reduce revenue vehicle miles but provide the same frequency of revenue service to the same number of riders, the recipient's apportionment under 49 U.S.C. 5336(b)(2)(A)(i) shall not be reduced as

a result of such actions. One recipient has submitted data acceptable to FTA in accordance with this provision. Accordingly, the revenue vehicle miles used in the Urbanized Area Formula database to calculate the fiscal year 1999 Urbanized Area Formula apportionment reflect the amount the recipient would have received without the reductions in mileage.

D. Urbanized Area Formula Fiscal Year 1999 Apportionments to Governors

The total Urbanized Area Formula apportionment to the Governor for use in areas under 200,000 in population for each state is shown on Table 4. Table 4 also contains the total apportionment amount attributable to each of the urbanized areas within the state. The Governor may determine the allocation of funds among the urbanized areas under 200,000 in population with one exception. As further discussed below in Section H, funds attributed to an urbanized area under 200,000 in population, located within the planning boundaries of a transportation management area, must be obligated in that area.

E. Transit Enhancements

For urbanized areas with populations 200,000 and over, TEA–21 established a minimum annual expenditure requirement of one percent for transit projects and project elements that qualify as enhancements under the Urbanized Area Formula Program. Table 4 indicates the amount set aside for enhancements in these areas. The term ''transit enhancement'' includes projects or project elements that are designed to enhance mass transportation service or use and are physically or functionally related to transit facilities.

(1) *Eligible enhancements.* Following are the transit projects and project elements that may be counted to meet the minimum enhancement expenditure requirement.

(a) Historic preservation, rehabilitation, and operation of historic mass transportation buildings, structures, and facilities (including historic bus and railroad facilities);

(b) Bus shelters;

(c) Landscaping and other scenic beautification, including tables, benches, trash receptacles, and street lights;

(d) Public art;

(e) Pedestrian access and walkways;

(f) Bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on mass transportation vehicles;

(g) Transit connections to parks within the recipient's transit service area;

(h) Signage; and

(i) Enhanced access for persons with disabilities to mass transportation.

(2) *Requirements.* One percent of the Urbanized Area Formula Program apportionment in each urbanized area with a population of 200,000 and over must be made available only for transit enhancements. When there are several grantees in an urbanized area, it is not required that each grantee spend one percent of its Urbanized Area Formula Program funds on transit enhancements. Rather, one percent of the urbanized area's apportionment must be expended on projects and project elements that qualify as enhancements. If these funds are not obligated for transit enhancements within three years following the fiscal year in which the funds are apportioned, the funds will lapse and no longer be available to the urbanized area, and will be reapportioned under the Urbanized Area Formula Program.

It will be the responsibility of the MPO to determine how the one percent will be allotted to transit projects. The one percent minimum requirement does not preclude more than one percent being expended in an urbanized area for transit enhancements. Items that are only eligible as enhancements, however—in particular, operating costs for historic facilities—may only be assisted within the one percent fund level.

(3) *Project Budget.* The project budget for each grant application that includes enhancement funds must include a scope code for transit enhancements and specific budget activity line items for transit enhancements.

(4) *Enhancement Report.* The recipient must submit a report to the appropriate FTA Regional Office listing the projects or elements of projects carried out with those funds during the previous fiscal year and the amount expended. The report must be submitted in the Federal fiscal year's final quarterly report, using activity line item codes from the approved project budget.

(5) *Bicycle Access.* TEA–21 provides that projects providing bicycle access to transit assisted with the FTA enhancement apportionment shall be eligible for a 95 percent Federal share.

(6) *Enhanced Access for Persons with Disabilities.* Enhancement projects or elements of projects designed to enhance access for persons with disabilities must go beyond the requirements contained in the Americans with Disabilities Act.

F. Fiscal Year 1999 Operating Assistance

Fiscal year 1999 funding for operating assistance is available only to urbanized areas with populations under 200,000. For these smaller areas, there is no limitation on the amount of the state apportionment that may be used for operating assistance, and the Federal/local share ratio is 50/50. In addition, for all areas, many of the activities formerly funded by FTA with operating assistance are now eligible capital items under the category of preventive maintenance at the Federal/local share ratio of 80/20. TEA–21 provides one exception to the non-availability of funds for operating assistance to areas with populations 200,000 and above. Operating assistance is available to any urbanized area with a populations of 200,000 and above if the number of total bus revenue vehicle miles operated in or directly serving the area is under 900,000, and if the number of buses operated in or directly serving the area does not exceed 15.

This provision is not available to small operators within a large urbanized area in which the total number of vehicles that provide service is more than 15 and the total number of bus revenue vehicle miles operated in or directly servicing the area is 900,000 or more.

The Omnibus Appropriations Act amended Section 3027 of TEA–21 (which in turn amended 49 U.S.C. 5336 regarding use of operating assistance in larger urbanized areas) to allow transit providers of services to the elderly and disabled that operate 20 or fewer vehicles and are located in urbanized areas with a population of at least 200,000 to use Federal funds to finance the operating costs of equipment and facilities used by the transit provider in providing mass transit services to elderly persons and persons with disabilities, providing that such assistance to all entities should not exceed $1,000,000,000 annually.

G. Carryover Funds for Operating Assistance

The operating assistance limitations remain on the unused fiscal years 1996–1998 funds. These funds continue to be available for obligation at the Federal/local share ratio of 50/50 in fiscal year 1999 and throughout the period of availability. For unused fiscal year 1998 funds for areas under 200,000, operating assistance as a capital project with an 80 percent federal match ratio (without limitation) will continue to be available in fiscal year 1999 and throughout the period of availability.

H. Designated Transportation Management Areas

All urbanized areas over 200,000 in population have been designated as transportation management areas (TMAs), in accordance with 49 U.S.C. Section 5305. These designations were formally made in a **Federal Register** Notice dated May 18, 1992 (57 FR 21160), signed by the Federal Highway Administrator and the Federal Transit Administrator. Additional areas may be designated as TMAs upon the request of the Governor and the MPO designated for such area or the affected local officials. As of October 1, 1998, two additional TMAs have been formally designated: Petersburg, Virginia, comprised solely of the Petersburg, Virginia, urbanized area; and Santa Barbara, Santa Maria, and Lompoc, California, which were combined and designated as one TMA.

Guidance for setting the boundaries of TMAs is contained in the joint transportation planning regulations codified at 23 CFR part 450 and 49 CFR part 613. In some cases, the TMA boundaries, which have been established by the MPO for the designated TMA, also include one or more urbanized areas with less than 200,000 in population. Where this situation exists, the discretion of the Governor to allocate Urbanized Area Formula program ''Governor's Apportionment'' funds for urbanized areas with less than 200,000 in population is restricted.

As required by 49 U.S.C. 5307(a)(2), a recipient(s) must be designated to dispense the Urbanized Area Formula funds attributable to TMAs. Those urbanized areas that do not already have a designated recipient must name one and notify the appropriate FTA regional office of the designation. This would include those urbanized areas with less than 200,000 in population that may receive TMA designation independently, or those with less than 200,00 in population which are currently included within the boundaries of a larger designated TMA. In both cases, the Governor would only have discretion to allocate Governor's Apportionment funds attributable to areas which are outside of designated TMA boundaries. In order for the FTA and Governors to know which urbanized areas under 200,000 in population are included within the boundaries of an existing TMA, and so that they can be identified in future **Federal Register** notices, each MPO whose TMA planning boundaries include these smaller urbanized areas is asked to identify such areas to the FTA. This notification should be made in writing to the Associate Administrator for Program Management, Federal Transit Administration, 400 Seventh Street, SW, Washington, DC 20590, no later than July 1 of each fiscal year. To date, FTA has been notified of the following urbanized areas with less than 200,000 in population that are included within the planning boundaries of designated TMAs:

Designated TMA	Small urbanized area included in TMA boundaries
Baltimore, Maryland	Annapolis, Maryland.
Dallas-Fort Worth, Texas	Denton, Texas; Lewisville, Texas.
Houston, Texas	Galveston, Texas; Texas City, Texas.
Orlando, Florida	Kissimmee, Florida.
Philadelphia, Pennsylvania	Pottstown, Pennsylvania.
Pittsburgh, Pennsylvania	Monessen, Pennsylvania; Steubenville-Weirton, OH–WV–PA (PA portion)
Seattle, Washington	Bremerton, Washington.
Washington, DC–MD–VA	Frederick, Maryland (MD portion).

I. Urbanized Area Formula Funds Used for Highway Purposes

Urbanized Area Formula funds apportioned to a TMA are also available for highway projects if the following three conditions are met: (1) Such use must be approved by the MPO in writing after appropriate notice and opportunity for comment and appeal are provided to affected transit providers; (2) in the determination of the Secretary, such funds are not needed for investments required by the Americans with Disabilities Act of 1990 (ADA); and (3) the MPO determines that local transit needs are being addressed.

Urbanized Area Formula funds which are designated for highway projects will be transferred to and administered by the FHWA. The MPO should notify FTA of its intent to program FTA funds for highway purposes.

IX. Section 5311 Nonurbanized Area Formula Program and Section 5311(b) Rural Transit Assistance Program (RTAP)

A. Nonurbanized Area Formula Program

The fiscal year 1999 Nonurbanized Area Formula apportionments to the states totaling $177,856,722 are displayed in Table 5. Of the $177,923,658 appropriated, one-half percent ($889,618) was reserved for oversight. In addition to the current appropriation, the funds available for apportionment included $822,682 in deobligated funds from fiscal years prior to 1999.

The population figures used in calculating these apportionments are from the 1990 Census.

The Nonurbanized Formula Program provides capital, operating and administrative assistance for areas under 50,000 in population. Each state must spend no less than 15 percent of its fiscal year 1999 Nonurbanized Area Formula apportionment for the development and support of intercity bus transportation, unless the Governor certifies to the Secretary that the intercity bus service needs of the state are being adequately met. Fiscal year 1999 Nonurbanized Area Formula grant applications must reflect this level of programming for intercity bus or include a certification from the Governor.

Funding for the Nonurbanized Area Formula Program is significantly higher under TEA–21 than it was under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). FTA encourages the states to use the increase to begin to expand the coverage of transit service into rural and small urban areas currently unserved and to improve levels of service in those areas which currently have only minimal transit service.

B. Rural Transit Assistance Program (RTAP)

The fiscal year 1999 RTAP allocations to the states totaling $5,401,831 are also displayed on Table 5. This amount includes $5,250,000 in fiscal year 1999 appropriated funds, and $151,831 in

prior year deobligated funds, which have become available for reallocation for this program.

The funds are allocated to the states to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in nonurbanized areas. These funds are to be used in conjunction with the states' administration of the Nonurbanized Area Formula Program.

Effective with fiscal year 1999, FTA has revised the administrative formula used to allocate RTAP funds to the states, by increasing the minimum allocation each state receives from $50,000 to $65,000. The minimum allocation for the insular areas remains at $10,000. The effect of this change is to distribute the increase in RTAP funds more equitably to the smaller states, to enable them to continue to provide effective RTAP services. Due to the increase in program funding, no state receives an allocation in fiscal year 1999 that is less than in fiscal year 1998.

X. Section 5310 Elderly and Persons with Disabilities Program

A total of $67,136,222 is apportioned to the states for fiscal year 1999 for the Elderly and Persons with Disabilities Program. In addition to the fiscal year 1999 appropriation of $67,035,601, the fiscal year 1999 apportionment also includes $100,621 in prior year unobligated funds which have become available for reapportionment for the Elderly and Persons with Disabilities Program. Table 6 shows each state's apportionment.

The formula for apportioning these funds uses 1990 Census population data for persons aged 65 and over and for persons with disabilities.

The funds provide capital assistance for transportation for elderly persons and persons with disabilities. Eligible capital expenses may include, at the option of the recipient, the acquisition of transportation services by a contract, lease, or other arrangement.

While the assistance is intended primarily for private non-profit organizations, public bodies that coordinate services for the elderly and persons with disabilities, or any public body that certifies to the state that non-profit organizations in the area are not readily available to carry out the service, may receive these funds.

These funds may be transferred by the Governor to supplement the Urbanized Area Formula or Nonurbanized Area formula capital funds during the last 90 days of the fiscal year.

XI. Surface Transportation Program Flexible Funds Used for Transit Purposes (Title 23, U.S.C.)

A. Transfer Process

TEA–21 made changes in how funds are to be transferred from FHWA to FTA. Under ISTEA, obligation authority was not transferred to and from FTA. TEA–21 provides that obligation authority will be transferred to and from FHWA to FTA. In order to accommodate this change, FHWA and FTA are revising internal transfer procedures. The external process from transferring funds may also be revised. Until these revised procedures are developed, the two agencies have agreed to use the transfer process that was established under ISTEA which is described below.

Flexible DOT funds, such as Surface Transportation Program (STP) funds, Congestion Mitigation and Air Quality (CMAQ) funds, or others, which are designated for use in transit projects, are transferred from the FHWA to FTA after which FTA approves the project and awards a grant. Flexible funds designated for transit projects must result from the metropolitan and state planning and programming process, and must be included in an approved State Transportation Improvement Program (STIP) before the funds can be transferred. In order to initiate the transfer process, the grantee must submit a completed application to the FTA Regional Office, and must notify the state highway/transportation agency that it has submitted an application which requires a transfer of funds. Once the state highway/transportation agency determines that the state has sufficient obligation authority, the state agency notifies the FHWA Division Office that the funds are to be used for transit purposes. FHWA then notifies the FTA of the transfer project for processing and obligation. The flexible funds transferred to FTA will be placed in an urbanized area or state account for one of the three existing formula programs—Urbanized Area, Nonurbanized Area, or Elderly and Persons with Disabilities.

The flexible funds are then treated as FTA formula funds, although they retain a special identifying code. They may be used for any purpose eligible under these FTA programs. All FTA requirements are applicable to transferred funds. Flexible funds should be combined with regular FTA formula funds in a single annual grant application.

B. Matching Share for Flexible Funds

The provisions of Title 23, U.S.C. regarding the non-Federal share apply to Title 23 funds used for transit projects. Thus, flexible funds transferred to FTA retain the same matching share that the funds would have if used for highway purposes and administered by the FHWA.

There are three instances in which a higher than 80 percent Federal share would be maintained. First, in states with large areas of Indian and certain public domain lands, and national forests, parks and monuments, the local share for highway projects is determined by a sliding scale rate, calculated based on the percentage of public lands within that state. This sliding scale, which permits a greater Federal share, but not to exceed 95 percent, is applicable to transit projects funded with flexible funds in these public land states. FHWA develops the sliding scale matching ratios for the increased Federal share.

Secondly, commuter carpooling and vanpooling projects and transit safety projects using flexible funds administered by FTA may retain the same 100 percent Federal share that would be allowed for ride-sharing or safety projects administered by the FHWA. The third instance includes the 100 percent Federal safety projects; however, these are subject to a nationwide 10 percent program limitation.

C. Other Funds Transferred to FTA

Certain demonstration projects authorized in title 23 are specified to be used for transit projects and are more appropriately administered by FTA. In such cases, FHWA has transferred the funds to FTA for administration. Since these funds are not STP flexible funds, they are transferred into the appropriate Capital Program category (Bus, New Starts, or fixed Guideway Modernization) for obligation and are administered as Capital projects.

XII. Section 5309 Capital Program

A. Fixed Guideway Modernization

TEA–21 modified the formula for allocating the Fixed Guideway Modernization funds. The new formula contains seven tiers. The allocation of funding under the first four tiers, through fiscal year 2003, will be allocated based on data used to apportion the funding in fiscal year 1997. Funding in the three new tiers will be apportioned based on the latest available route miles and revenue vehicle miles on segments at least seven years old as reported to the National Transit Database.

Table 7 displays the fiscal year 1999 Fixed Guideway Modernization apportionments. Fixed Guideway

Modernization funds apportioned for this section must be used for capital projects to maintain, modernize, or improve fixed guideway systems.

All urbanized areas with fixed guideway systems that are at least seven years old are eligible to receive Fixed Guideway Modernization funds. A request for the start-up service dates for fixed guideways has been incorporated into the National Transit Database reporting system to ensure that all eligible fixed guideway data is included in the calculation of these apportionments. A threshold level of more than one mile of fixed guideway is required to receive Fixed Guideway Modernization funds. Therefore, urbanized areas reported one mile or less of Fixed Guideway mileage under the National Transit Database are not included.

For fiscal year 1999, $902,800,000 was appropriated for fixed guideway modernization. After deducting the three-fourth percent for Oversight ($6,771,000), $896,029,000 is available for apportionment to the specified urbanized areas.

Each year, the new fixed guideway modernization formula will allocate funds by seven tiers as follows:

Tier 1

The first $497,700,000 shall be apportioned to the following urbanized areas as follows: Baltimore $8,372,000; Boston $38,948,000; Chicago/ Northwestern Indiana $78,169,000; Cleveland $9,509,500; New Orleans $1,730,588; New York $176,034,461; Northeastern New Jersey $50,604,653; Philadelphia/Southern New Jersey $58,924,764; Pittsburgh $13,662,463; San Francisco $33,989,571; Southwestern Connecticut $27,755,000.

Tier 2

The next $70,000,000 shall be apportioned as follows: 50 percent to areas identified in Tier I and 50 percent to other urbanized areas with fixed guideway segments which have been in operation at least seven years. These funds are apportioned using the Urbanized Area Formula Program fixed guideway tier formula factors that were used to apportion funds for the Fixed Guideway Modernization Program in fiscal year 1997.

Tier 3

The next $5,700,000 shall be apportioned to the following urbanized areas as follows: Pittsburgh, 61.76 percent; Cleveland, 10.73 percent; New Orleans, 5.79 percent; the remaining 21.72 percent is apportioned to all other cities using the same fixed guideway tier data used for Tier II.

Tier 4

The next $186,600,000 shall be apportioned to all eligible areas using the same year fixed guideway tier data that was used for Tiers II and III.

Tier 5

The next $70,000,000 shall be apportioned as follows: 65 percent to the eleven areas specified in Tier I, and 35 percent to other urbanized areas with fixed guideway system segments in revenue service for at least seven years. Allocations will be based on the latest available route miles and revenue vehicle miles for fixed guideway segments at least seven years old as reported to the National Transit Database.

Tier 6

The next $50,000,000 shall be apportioned as follows: 60 percent to the eleven areas specified in Tier I, and 40 percent to the other urbanized areas with fixed guideway system segments in revenue service for at least seven years. Allocations will be based on the latest available route miles and revenue vehicle miles for fixed guideway segments at least seven years old as reported to the National Transit Database.

Tier 7

Any remaining amounts shall be apportioned as follows: 50 percent to the eleven urbanized areas specified in Tier I, and 50 percent to the other urbanized areas with fixed guideway system segments in revenue service for at least seven years. Allocations will be based on the latest available route miles and revenue vehicle miles for fixed guideway segments at least seven years old as reported to the National Transit Database.

Table 12 contains the fiscal years 1998–2003 apportionment formula for the Section 5309 Fixed Guideway Modernization Program.

B. New Starts

The fiscal year 1999 appropriation for New Starts is $902,800,000 which was fully allocated in the fiscal year 1999 DOT Appropriations Act. However, by statute, this amount is reduced by three-fourth percent ($6,771,000) for Oversight activities, leaving $896,029,000 available for allocations to areas. The Oversight reduction was applied on a prorata basis to all 95 projects specified in the fiscal year 1999 Omnibus Appropriations Act yielding the final allocation for each of these projects (contain in Table 8 of this **Federal Register** Notice).

Prior year unobligated appropriations for New Starts in the amount of $430,856,230 remain available for obligation in fiscal year 1999. These carryover amounts are displayed in Table 8A, along with explanatory notes.

Since New Starts funds are used for design and construction of new systems or extensions to existing systems, preventive maintenance is not an eligible cost under this program.

C. Bus

The fiscal year 1999 appropriation for Bus is $451,400,000 for the purchase of buses, bus-related equipment and paratransit vehicles, and for the construction of bus-related facilities. TEA–21 established a $100,000,000 Clean Fuels Formula Program under Section 5308. The program is authorized to be funded with $50,000,000 from the Bus category of the Capital Program, and $50,000,000 from the Formula Program. However, the fiscal year 1999 Omnibus Appropriations Act directs FTA to transfer $50,000,000 Appropriated under the Formula Program to and merge it with funding provided for the Bus category of the Capital Program. Thus, $501,400,000 is available for funding the Bus category of the Capital Program. After deducting the three-fourth percent for oversight ($3,760,500), $497,639,500 remains available for projects.

The 1999 Omnibus Appropriations Act earmarked all of the fiscal year 1999 Bus funds to specified states or localities for bus and bus-related projects.

Because the three-fourth percent for oversight was subtracted from the amount appropriated, each bus project identified in the Conference Report receives three-fourth percent less than the funding level contained in the report. No funds remain available for discretionary allocation by the Federal Transit Administrator. Table 9 displays the allocations of the fiscal year 1999 Bus funds by area and also shows prior year unobligated earmarks for the Bus Program. The fiscal year 1999 bus allocations include the funding which would have been available for the Clean Fuels Formula Program under TEA–21.

Prior year unobligated appropriations for Bus in the amount of $379,813,842 remain available for obligation in fiscal year 1999, and are displayed in Table 9A.

XIII. New Programs

A. Section 5308 Clean Fuels Formula Program

TEA–21 established a $100,000,000 Clean Fuels Formula Program under Section 5308, to be funded with $50,000,000 from the Bus category of the Capital Program, and $50,000,000 from the Formula Program. However, the fiscal year 1999 Omnibus Appropriations Act transfers $50,000,000 appropriated under the Formula Program to and merges it with funding provided for the replacement, rehabilitation and purchase of buses and related equipment and the construction of bus related facilities under the Bus category of the Capital Program. In addition, in fiscal year 1999 Congress allocated the entire Bus category, including the $100,000,000, which TEA–21 provides for funding of the Clean Fuels Formula Program. These appropriation actions override the provisions established in TEA–21 for the Clean Fuels Formula Program. Therefore, FTA cannot implement this new program. A rulemaking to implement the Clean Fuels Formula program is being developed for use in fiscal year 2000. The fiscal year 1999 Bus Allocations on Table 9 include the funding which would have been available for the Clean Fuels Formula Program under TEA–21.

B. Over-the-Road Bus Accessibility Program

The Over-the-Road Bus Accessibility Program (OTRB) authorizes FTA to make grants to operators of over-the-road buses to finance the incremental capital and training costs of complying with the DOT over-the-road bus accessibility final rule, published on September 24, 1998. The legislation calls for national solicitation of applications, with grantees to be selected on a competitive basis. Federal funds are available for up to 50 percent of the project cost. A total of $2,000,000 is apportioned for intercity fixed route operators in fiscal year 1999.

FTA is exploring two approaches for implementation of the capital portion of the program. One approach would be to enter into a cooperative agreement with an intermediate entity which represents the over-the-road bus industry. This entity would serve as the funding distribution mechanism. This approach has the merit of consolidating numerous small grants and would allow a group familiar with the over-the-road bus industry to carry out the program. The entity would accept and review grant applications and make recommendations for funding based on the criteria in TEA–21 and in coordination with FTA and enter into agreements with over-the-road bus providers. The entity would also pass on all Federal requirements to the over-the-road bus operators. TEA–21 provides that all Federal requirements applicable to the Section 5311 Nonurbanized Area Formula Program are applicable to the Over-the-Road Bus Program. Federal requirements include but are not limited to competitive procurement, labor protections, Buy America, and civil rights requirements.

Alternately, FTA may implement the program with individual grants to over-the-road bus operators. With this approach, there would be a national solicitation of applications and FTA would review applications against the criteria in TEA–21 and make recommendations for funding. The appropriate FTA regional office would review the application and approve the grant.

In addition, FTA is proposing to enter into an agreement with a single agency which represents the disability community to take the lead on a national training initiative.

FTA will issue further guidance and application instructions for this program.

C. Job Access and Reverse Commute Program

A total of $75,000,000 is appropriated for the Job Access and Reverse Commute Program in fiscal year 1999. Of this amount, $50,000,000 is guaranteed under the discretionary spending cap and $25,000,000 was made available from other discretionary spending offsets. This program, established under TEA–21, provides funding for the provision of transportation services designed to increase access to jobs and employment-related activities. Job Access projects are those which transport welfare recipients and low-income individuals in urban, suburban, or rural areas to and from jobs and activities related to their employment. Reverse Commute projects provide transportation services for the general public from urban, suburban, and rural areas to suburban employment opportunities.

One of the major goals of the Job Access and Reverse Commute program is to increase collaboration among transportation providers, human service agencies, employers, metropolitan planning organizations, states, and affected communities and individuals. All projects funded under this program must be derived from a regional Job Access and Reverse Commute Transportation Plan, developed through a regional approach which supports the implementation of a variety of transportation services designed to connect welfare recipients to jobs and related activities. A key element of the program is making the most efficient use of existing public, nonprofit and private transportation service providers.

A Federal Register Notice will be published by the end of October which will provide program guidance and application procedures. The notice will also be available on the FTA website.

D. Transportation and Community and System Preservation Pilot Program (TCSP)

Section 1221 of TEA–21 established a pilot program that will enable grantees to plan or implement activities that investigate and address the relationship between transportation and community and system preservation. Eligible grantees are State agencies, metropolitan planning organizations (MPOs) and units of local governments, including public transit agencies. TCSP will provide $20,000,000 in fiscal year 1999 and $25,000,000 per year for fiscal years 2000 through 2003 for planning and implementation grants, as well as research, which address transportation efficiency while meeting community preservation and environmental goals.

TCSP activities must be eligible under Title 23 (the Federal highway program) of Chapter 52 of Title 49 (the Federal transit program) of the United States Code, or must be activities which the Secretary of Transportation determines to be appropriate. TCSP discretionary grants will be used to plan and implement strategies which (1) improve the efficiency of the transportation system; (2) reduce the impacts of transportation on the environment; (3) reduce the need for costly future public infrastructure; (4) ensure efficient access to jobs, services and centers of trade, and (5) encourage private sector development patterns which achieve these goals. Grants will be directed to new and innovative activities that are eligible but under the current Federal-aid program. TCSP activities must be coordinated with the MPO and/or state transportation planning processes.

The FHWA is administering this program and has established an interagency working group, which includes the FTA, to design and implement TCSP. On September 16, 1998, a Federal Register Notice requested comments within 60 days on TCSP implementation in fiscal year 2000 and beyond. The Notice also requested that eligible entities interested in applying for fiscal year 1999 planning and implementation grants should

submit letters of intent within 60 days. The DOT expects to select about 50 letters of intent to be developed into full proposals, and to fund 20 to 30 planning and implementation grants in fiscal year 1999. TCSP research activities will begin in fiscal year 2000. The voice mail for information on TCSP is (800) 488–6034.

XIV. Unit Values of Data for the Section 5307 Urbanized Area Formula Program, Section 5311 Nonurbanized Area Formula Program, and Section 5309 Capital Fixed Guideway Modernization

For technical assistance purposes, the dollar unit values of data derived from the computations of the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, and the Capital Program—Fixed Guideway Modernization apportionments are included in this Notice in Table 13. To determine how a particular apportionment amount was developed, areas may multiply their population, population density, and data from the NTD by these unit values.

XV. Period of Availability of Funds

The funds apportioned under the Metropolitan Planning Program and the State Planning and Research Program, the Urbanized Area Formula Program, and the Fixed Guideway Modernization Program, in this notice, will remain available to be obligated by FTA to recipients for three fiscal years following fiscal year 1999. Any of these apportioned funds unobligated at the close of business on September 30, 2002 will revert to FTA for reapportionment under these respective programs.

Funds apportioned to nonurbanized areas under the Nonurbanized Area Formula Program, including RTAP funds, will remain available for two fiscal years following fiscal year 1999. Any such funds remaining unobligated at the close of business on September 30, 2001, will revert to FTA for reapportionment among the states under the Nonurbanized Area Formula Program. Funds allocated to States under the Elderly and Persons with Disabilities Program in this Notice must be obligated by September 30, 1999. Any such funds remaining unobligated as of this date will revert to FTA for reapportionment among the states under the Elderly and Persons with Disabilities Program. The fiscal year 1999 Omnibus Appropriations Act includes a provision requiring that fiscal year 1999 New Starts and Bus funds not obligated for their original purpose as of September 30, 2001, shall be made available for other discretionary projects within the respective categories of the Capital Program. Similar provisions in the 1998 and 1997 DOT Appropriations Acts required that fiscal year 1998 Bus and New Starts funds that are not obligated by September 30, 2000 also be made available for other discretionary Bus or New Starts projects, respectively; and fiscal year 1997 Bus and New Starts funds unobligated by September 30, 1999 shall be made available for other discretionary Bus or New Starts projects, respectively.

XVI. Automatic Pre-Award Authority to Incur Project Cost

A. Background

Since fiscal year 1994, FTA has provided pre-award authority to cover certain planning and capital costs prior to grant award. This automatic pre-award spending authority permits a grantee to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects. Prior to exercising pre-award authority, grantees must comply with the conditions and environmental planning and other Federal requirements outlined in paragraphs B and C immediately below. Failure to do so will render an otherwise eligible project ineligible for FTA financial assistance. In addition, grantees are strongly encouraged to consult with the appropriate regional office if there could be any question regarding the eligibility of the project for future FTA funds or the applicability of the conditions and Federal requirements.

Authority to incur costs for fiscal year 1998 Fixed Guideway Modernization, Metropolitan Planning, Urbanized Area Formula, Elderly and Persons with Disabilities, Nonurbanized Area Formula, STP or CMAQ flexible funds to be transferred from the FHWA and State Planning and Research Programs in advance of possible future Federal participation was provided in the December 5, 1997, **Federal Register** Notice. Pre-award authority was extended in the June 24, 1998 **Federal Register** Notice on TEA–21 to all formula funds and flexible funds that will be apportioned during the authorization period of TEA–21, 1998–2003. Pre-award authority also applies to Capital Bus funds identified in this notice. Pre-award authority does not apply to Capital New Start funds, or to Capital Bus projects not specified in this or previous notices. Pre-award authority also applies to preventive maintenance costs incurred within a local fiscal year ending during calendar year 1997, or thereafter, under the formula programs cited above.

B. Conditions

Similar to the FTA Letter of No Prejudice (LONP) authority, the conditions under which this authority may be utilized are specified below:

(1) This pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

(2) All FTA statutory, procedural, and contractual requirements must be met at the appropriate time.

(3) No action will be taken by the grantee that prejudices the legal and administrative findings which the Federal Transit Administrator must make in order to approve a project.

(4) Local funds expended by the grantee pursuant to and after the date of this authority will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).

(5) The Federal amount of any future FTA assistance to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/local match ratio at the time the funds are obligated.

(6) For funds to which this authority applies, the authority expires with the lapsing of the fiscal year funds.

C. Environmental, Planning, and Other Federal Requirements

FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Some of these requirements must be met before pre-award costs are incurred, notably the requirements of the National Environmental Policy Act (NEPA), and the planning requirements. Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed *before* state or local funds are spent on implementing activities such as final design, construction, and acquisition for a project that is expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA environmental regulations (23 CFR part 771), the grantee may not advance the project beyond planning and preliminary engineering before FTA has approved either a categorical exclusion (refer to 23 CFR part 771.117(d)), a finding of no

significant impact, or a final environmental impact statement. The conformity requirements of the Clean Air Act (40 CFR part 93) also must be fully met before the project may be advanced with non-Federal funds.

Similiarly, the requirement that a project be included in a locally adopted metropolitan transportation improvement program and federally approved statewide transportation improvement program must be followed before the project may be advanced with non-Federal funds. In addition, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this increased administrative flexibility requires a grantee to make certain that no Federal requirements are circumvented through the use of pre-award authority. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate regional office.

Before an applicant may incur costs either for activities expected to be funded by New Start funds, or for Bus Capital projects not listed in this notice or previous notices, it must first obtain a written LONP from FTA. To obtain an LONP, a grantee must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office.

XVII. Letter of No Prejudice Policy (Prior Approval of Pre-Award Authority)

A. Policy

The latest guidance on Letters of No Prejudice (LONP) policy and procedures is contained in an October 21, 1982 **Federal Register** Notice. Since the issuance of that notice in 1982 there have been many changes to the FTA program including automatic pre-award authority for formula funds, flexible funds transferred from the FHWA and for bus earmarks. The 1982 policy was based on the philosophy that LONPs would only be issued under the most extenuating circumstances. With substantial experience with automatic pre-award authority, this philosophy is no longer an accurate reflection of FTA policy. This **Federal Register** Notice supersedes the Letter of No Prejudice (LONP) policy issued October 21, 1982.

LONP authority allows an applicant to incur costs on a future project utilizing non-Federal resources with the understanding that the costs incurred subsequent to the issuance of the LONP may be reimbursable as eligible expenses or eligible for credit toward the local match should the FTA approve the project at a later date. LONPs are applicable to projects not covered by automatic pre-award authority. The majority of LONPs will be for New Starts not covered under a full funding grant agreement or for Section 5309 bus funds not yet appropriated by Congress. At the end of an authorization period, there may be LONPs for formula funds beyond the life of the current authorization.

Under most circumstances the LONP will cover the total project. Under certain circumstances the LONP may be issued for local match only. In such cases the local match would be to permit real estate to be used for match for the project at a later date.

B. Conditions

The following conditions apply to all LONPs.

(1) LONP pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

(2) All FTA statutory, procedural, and contractual requirements must be met.

(3) No action will be taken by the grantee that prejudices the legal and administrative findings which the Federal Transit Administrator must make in order to approve a project.

(4) Local funds expended by the grantee pursuant to and after the date of the LONP will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).

(5) The Federal amount of any future FTA assistance to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/local match ratio at the time the funds are obligated.

(6) For funds to which this pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.

C. Environmental, Planning, and Other Federal Requirements

As with automatic pre-award authority, FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Some of these requirements must be met before pre-award costs are incurred, notably the requirements of the National Environmental Policy Act (NEPA), and the planning requirements. Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed before state or local funds are spent on implementation activities such as final design, construction, or acquisition for a project expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA's environmental regulations (23 CFR part 771), the grantee may not advance the project beyond planning and preliminary engineering before FTA has approved either a categorical exclusion (refer to 23 CFR part 771.117(d)), a finding of no significant impact, or a final environmental impact statement. The conformity requirements of the Clean Air Act (40 CFR part 93) also must be fully met before the project may be advanced with non-Federal funds.

Similarly, the requirement that a project be included in a locally adopted metropolitan transportation improvement program and federally approved statewide transportation improvement program must be followed before the project may be advanced with non-Federal funds. In addition, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this pre-award authority requires a grantee to make certain that no Federal requirements are circumvented. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate regional office.

D. Request for LONP

Before an applicant may incur costs for a project not covered by automatic pre-award authority, it must first submit a written request for an LONP to the appropriate regional office. This written request must include a description of the project for which pre-award authority is desired and a justification for the request.

XVIII. State Infrastructure Banks

The State Infrastructure Bank (SIB) pilot program was authorized in the National Highway System Designation Act of 1995. It allows the creation of state-level institutions that can use Federal Highway Administration (FHWA) and FTA funds to make loans

and loan guarantees (and other forms of credit enhancement) to transit and highway projects. The SIBs may earn interest on deposits of Federal funds, and they may charge below-market interest rates on long-term loans.

While 31 states established SIBs under the NHS Act authorizations, TEA–21 only renewed this authority to four states—California, Florida, Missouri, and Rhode Island. Thus, the original SIBs may continue to function with funds appropriated for their use in 1996 and 1997, but only the four SIBs authorized in TEA–21 will be allowed to use fiscal year 1998 and subsequent year grant funds for capitalization. These states may use up to 100 percent of their highway or transit formula funds for capitalization, but there are no additional funds apportioned specifically to SIBs. TEA–21 also allowed the four authorized SIBs to use any Federal capital funds to make loans to highway, transit, and rail projects—a significant increase in flexibility.

XIX. FTA Home Page on the Internet

FTA provides extended customer service by making available transit information on the FTA Home Page web site, including this Apportionment Notice. Also posted on the web site are FTA program circulars: C9030.1C, Urbanized Area Formula Program: Grant Application Instructions, dated October 1, 1998; C9040.1E, Nonurbanized Area Formula Program Guidance and Grant Application Instructions, dated October 1, 1998; C9070.1E, Elderly and Persons with Disabilities Program Guidance and Application Instructions, dated October 1, 1998; C9300.1A, Capital Program: Grant Application Instructions, dated October 1, 1998; 4220.1D, Third Party Contracting Requirements, dated April 15, 1996; C5010.1C, Grant Management Guidelines, dated October 1, 1998; and C8100.1B, Program Guidance and Application Instructions for Metropolitan Planning Program Grants, dated October 25, 1996. The fiscal year 1999 Annual List of Certifications and Assurances is also posted on the FTA web site. Other documents on the FTA web site of particular interest to public transit providers and users include the 1997 Statistical Summaries of FTA Grant Assistance Programs, and the National Transit Database Profiles.

The FTA Home Page may be accessed at: http://www.fta.dot.gov. FTA circulars and other guidance are at: http://www.fta.dot.gov/program.

Grantees should check our web site frequently to keep up to date on new postings.

XX. 1999 Annual List of Certifications and Assurances

The Fiscal Year 1999 Annual List of Certifications and Assurances is published in conjunction with the Apportionments, as per 49 U.S.C. section 5307(k). It appears as a separate Part of the **Federal Register** on the same date whenever possible. The 1999 list contains several changes to the previous year's **Federal Register** publication. (1) All applicants for FTA Capital Program or Formula Program assistance, and current grantees with an active project financed with FTA Capital Program or Formula Program assistance, will be required to provide the Appendix A Certifications and Assurances within 90 days from the date of the above **Federal Register** publication or with its first grant application in fiscal year 1999, whichever comes first. (2) The attorney signature from previous years on the single signature page is not acceptable. A current attorney's affirmation is required to certify applicant's legal authority to comply with fiscal year 1999 FTA funding assistance. (3) As in previous years, the grant applicant should (when possible) certify electronically, indicating that a current attorney's signature is on file. (4) The applicant is advised that Transit Enhancement activities (49 U.S.C. 5307(k)) require an annual report listing projects carried out during the previous year.

The fiscal year 1999 Annual List of Certifications and Assurances is accessible on the Internet at www.fta.dot.gov. Any questions regarding this document may be addressed to the appropriate Regional Office or to Pat Berkley, Office of Program Management, Federal Transit Administration, (202) 366–6470.

XXI. Grant Application Procedures

All applications for FTA funds should be submitted to the appropriate FTA Regional Office. As described in Section V, FTA is expecting that most applications will be filed electronically in FY 1999 using the new TEAM system. Formula grant applications should be prepared in conformance with the following FTA Circulars: Program Guidance and Application Instructions for Metropolitan Planning Program Grants—C8100.1B, October 25, 1996; Urbanized Area Formula Program: Grant Application Instructions—C9030.1C, October 1, 1998; Nonurbanized Area Formula Program Guidance and Grant Application Instructions—C9040.1E, October 1, 1998; Section 5310 Elderly and Persons with Disabilities Program Guidance and Application Instructions C9070.1E, October 1, 1998; and Section 5309 Capital Program: Grant Application Instructions—C9300.1A, October 1, 1998. Applications for STP ''flexible'' fund grants should be prepared in the same manner as the apportioned funds under the Urbanized Area Formula, Nonurbanized Area Formula, or Elderly and Persons with Disabilities Programs. Guidance on preparation of applications for State Planning and Research funds may be obtained from each FTA Regional Office. Copies of circulars are available from FTA Regional Offices as well as the FTA Home Page on the Internet.

Issued on: October 29, 1998.

Gordon J. Linton,

Administrator.

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TABLE 1

FEDERAL TRANSIT ADMINISTRATION

FY 1999 APPROPRIATIONS FOR GRANT PROGRAMS

SOURCES OF FUNDS	FY 1999 APPROPRIATIONS
TRANSIT PLANNING AND RESEARCH PROGRAMS	
Planning:	
Section 5303 Metropolitan Planning Program	$43,841,600
Reapportioned Funds Added	59,598
Total Apportioned	$43,901,198
Section 5313(b) State Planning and Research Program	$9,158,400
Reapportioned Funds Added	98,848
Total Apportioned	$9,257,248
Research:	
Section 5311(b) Rural Transit Assistance Program (RTAP)	$5,250,000
Reapportioned Funds Added	151,831
Total Apportioned	$5,401,831
FORMULA PROGRAMS	$2,850,000,000
Alaska Railroad (Section 5307)	4,849,950
Less Oversight (one-half percent)	(24,250)
Total Available	4,825,700
Section 5308 Clean Fuels Formula Program	50,000,000 a/
Over-the-Road Bus Accessibility Program	2,000,000
Section 5307 Urbanized Area Formula Program	
91.23% of Total Available for Sections 5307, 5311, and 5310	$2,548,190,791
Less Oversight (one-half percent)	(12,740,954)
Reapportioned Funds Added	5,055,703
Total Apportioned	$2,540,505,540
Section 5311 Nonurbanized Area Formula Program	
6.37% of Total Available for Sections 5307, 5311, and 5310	$177,923,658
Less Oversight (one-half percent)	(889,618)
Reapportioned Funds Added	822,682
Total Apportioned	$177,856,722
Section 5310 Elderly and Persons with Disabilities Formula Program	
2.4% of Total Available for Sections 5307, 5311, and 5310	$67,035,601
Reapportioned Funds Added	100,621
Total Apportioned	$67,136,222
CAPITAL PROGRAM	$2,257,000,000
Section 5309 Fixed Guideway Modernization	$902,800,000
Less Oversight (three-fourth percent)	(6,771,000)
Total Apportioned	$896,029,000
Section 5309 New Starts	$902,800,000
Less Oversight (three-fourth percent)	(6,771,000)
Total Allocated	$896,029,000
Section 5309 Bus	$501,400,000 b/
Less Oversight (three-fourth percent)	(3,760,500)
Total Allocated	$497,639,500
JOB ACCESS AND REVERSE COMMUTE PROGRAM (Section 3037, TEA-21)	$75,000,000
TOTAL APPROPRIATIONS (Above Grant Programs)	$5,240,250,000

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a/ The FY 1999 Appropriations Act transfers $50,000,000 to the Bus Category of the Capital Program.
b/ Includes $451,400,000 plus $50,000,000 transferred from the Clean Fuels Formula Program.

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5303 METROPOLITAN PLANNING PROGRAM AND SECTION 5313(b) STATE PLANNING AND RESEARCH PROGRAM APPORTIONMENTS

STATE	FY 1999 SECTION 5303 APPORTIONMENT	FY 1999 SECTION 5313(b) APPORTIONMENT
Alabama	$384,440	$101,355
Alaska	175,605	46,286
Arizona	699,026	146,306
Arkansas	175,605	46,286
California	7,482,037	1,402,810
Colorado	571,100	130,982
Connecticut	512,969	135,272
Delaware	175,605	46,286
District of Columbia	236,694	46,286
Florida	2,392,714	560,635
Georgia	847,148	179,614
Hawaii	175,605	46,286
Idaho	175,605	46,286
Illinois	2,564,877	467,049
Indiana	622,689	148,326
Iowa	196,974	51,926
Kansas	227,672	56,110
Kentucky	272,747	70,336
Louisiana	471,350	122,731
Maine	175,605	46,286
Maryland	1,019,100	197,285
Massachusetts	1,242,933	260,573
Michigan	1,601,331	320,181
Minnesota	650,198	130,603
Mississippi	175,605	46,286
Missouri	718,958	153,287
Montana	175,605	46,286
Nebraska	175,605	46,286
Nevada	190,387	50,188
New Hampshire	175,605	46,286
New Jersey	2,175,970	365,189
New Mexico	175,605	46,286
New York	4,418,750	777,583
North Carolina	524,905	138,421
North Dakota	175,605	46,286
Ohio	1,512,725	366,700
Oklahoma	282,947	74,604
Oregon	317,882	78,224
Pennsylvania	1,962,133	397,026
Puerto Rico	475,683	117,070
Rhode Island	175,605	46,286
South Carolina	298,025	78,592
South Dakota	175,605	46,286
Tennessee	463,404	122,179
Texas	2,982,127	626,441
Utah	275,638	72,688
Vermont	175,605	46,286
Virginia	980,769	210,961
Washington	781,819	177,084
West Virginia	175,605	46,286
Wisconsin	557,792	135,769
Wyoming	175,605	46,286
TOTAL	$43,901,198	$9,257,248

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TABLE 3

FEDERAL HIGHWAY ADMINISTRATION

FY 1999 METROPOLITAN PLANNING PROGRAM (PL) AND ESTIMATED STATE PLANNING AND RESEARCH (SP&R) PROGRAM APPORTIONMENTS

STATE	FY 1999 PL APPORTIONMENT	ESTIMATED FY 1999 SP&R APPORTIONMENT
Alabama	$2,076,485	$8,902,792
Alaska	935,077	5,941,876
Arizona	2,997,412	7,821,349
Arkansas	935,077	6,417,059
California	28,739,677	44,490,903
Colorado	2,683,477	5,794,862
Connecticut	2,771,365	7,423,413
Delaware	935,077	2,239,588
District/Col	935,077	1,931,292
Florida	11,485,908	22,828,491
Georgia	3,679,818	16,861,638
Hawaii	935,077	2,503,519
Idaho	935,077	3,634,029
Illinois	9,568,581	16,206,732
Indiana	3,038,806	11,521,315
Iowa	1,063,827	5,870,297
Kansas	1,149,541	5,703,445
Kentucky	1,440,989	7,605,645
Louisiana	2,514,419	7,642,968
Maine	935,077	2,587,769
Maryland	4,041,840	7,182,248
Massachusetts	5,338,449	8,955,734
Michigan	6,559,638	15,272,015
Minnesota	2,675,707	7,168,169
Mississippi	935,077	5,829,406
Missouri	3,140,445	11,422,463
Montana	935,077	5,058,513
Nebraska	935,077	3,918,951
Nevada	1,028,212	3,606,677
New Hampshire	935,077	2,459,889
New Jersey	7,481,735	12,346,515
New Mexico	935,077	4,851,457
New York	15,930,590	24,430,587
North Carolina	2,835,883	13,349,356
North Dakota	935,077	3,307,642
Ohio	7,512,695	16,140,061
Oklahoma	1,528,437	7,606,520
Oregon	1,602,601	5,840,992
Pennsylvania	8,133,985	21,187,529
Rhode Island	930,524	2,989,826
South Carolina	1,610,139	7,893,992
South Dakota	935,077	3,500,172
Tennessee	2,503,121	9,935,503
Texas	12,834,093	35,661,580
Utah	1,489,173	3,776,372
Vermont	935,077	2,279,663
Virginia	4,322,033	12,356,714
Washington	3,627,977	8,582,923
West Virginia	935,077	3,931,098
Wisconsin	2,781,549	9,764,256
Wyoming	935,077	3,502,738
TOTAL	$187,015,440	$478,038,539

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FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1999 ONE PERCENT TRANSIT ENHANCEMENT	FY 1999 APPORTIONMENT
OVER 1,000,000 IN POPULATION	$18,686,665	$1,868,666,460
200,000-1,000,000 IN POPULATION	4,275,886	427,588,610
50,000-200,000 IN POPULATION		244,250,470
NATIONAL TOTAL	$22,962,551	$2,540,505,540

URBANIZED AREA/STATE	FY 1999 ONE PERCENT TRANSIT ENHANCEMENT	FY 1999 APPORTIONMENT
Amounts Apportioned to Urbanized Areas Over 1,000,000 in Population:		
Atlanta, GA	$396,558	$39,655,773
Baltimore, MD	299,507	29,950,715
Boston, MA	709,339	70,933,901
Chicago, IL-Northwestern IN	1,671,136	167,113,625
Cincinnati, OH-KY	128,262	12,826,177
Cleveland, OH	221,096	22,109,564
Dallas-Fort Worth, TX	384,788	38,478,792
Denver, CO	232,029	23,202,920
Detroit, MI	314,808	31,480,777
Ft Lauderdale-Hollywood-Pompano Beach, FL.	195,505	19,550,458
Houston, TX	383,207	38,320,702
Kansas City, MO-KS	85,838	8,583,754
Los Angeles, CA	1,718,494	171,849,410
Miami-Hialeah, FL	332,670	33,266,984
Milwaukee, WI	167,651	16,765,116
Minneapolis-St. Paul, MN	230,775	23,077,459
New Orleans, LA	139,207	13,920,676
New York, NY-Northeastern NJ	5,346,716	534,671,553
Norfolk-Virginia Beach-Newport News, VA	113,044	11,304,420
Philadelphia, PA-NJ	948,638	94,863,784
Phoenix, AZ	202,335	20,233,534
Pittsburgh, PA	269,344	26,934,356
Portland-Vancouver, OR-WA	208,272	20,827,208
Riverside-San Bernardino, CA	153,995	15,399,481
Sacramento, CA	119,279	11,927,923
San Antonio, TX	163,258	16,325,781
San Diego, CA	357,152	35,715,164
San Francisco-Oakland, CA	983,628	98,362,792
San Jose, CA	260,842	26,084,237
San Juan, PR	292,240	29,223,983
Seattle, WA	490,406	49,040,591
St. Louis, MO-IL	216,828	21,682,750
Tampa-St. Petersburg-Clearwater, FL	139,421	13,942,148
Washington, DC-MD-VA	810,400	81,039,952
TOTAL	$18,686,665	$1,868,666,460

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FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1999 ONE PERCENT TRANSIT ENHANCEMENT	FY 1999 APPORTIONMENT
Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in Population:		
Akron, OH	$51,899	$5,189,924
Albany-Schenectady-Troy, NY	57,573	5,757,348
Albuquerque, NM	47,656	4,765,584
Allentown-Bethlehem-Easton, PA-NJ	41,321	4,132,116
Anchorage, AK	21,487	2,148,748
Ann Arbor, MI	30,713	3,071,271
Augusta, GA-SC	17,124	1,712,358
Austin, TX	110,708	11,070,829
Bakersfield, CA	31,182	3,118,240
Baton Rouge, LA	26,268	2,626,751
Birmingham, AL	36,735	3,673,523
Bridgeport-Milford, CT	54,158	5,415,845
Buffalo-Niagara Falls, NY	105,436	10,543,566
Canton, OH	16,931	1,693,143
Charleston, SC	27,948	2,794,798
Charlotte, NC	52,318	5,231,811
Chattanooga, TN-GA	20,566	2,056,646
Colorado Springs, CO	34,812	3,481,215
Columbia, SC	24,714	2,471,396
Columbus, GA-AL	14,394	1,439,372
Columbus, OH	97,186	9,718,611
Corpus Christi, TX	33,086	3,308,575
Davenport-Rock Island-Moline, IA-IL	24,622	2,462,183
Dayton, OH	102,436	10,243,601
Daytona Beach, FL	28,411	2,841,098
Des Moines, IA	32,736	3,273,626
Durham, NC	28,839	2,883,911
El Paso, TX-NM	72,462	7,246,167
Fayetteville, NC	15,174	1,517,435
Flint, MI	35,061	3,506,091
Fort Myers-Cape Coral, FL	20,929	2,092,870
Fort Wayne, IN	17,280	1,727,970
Fresno, CA	47,336	4,733,622
Grand Rapids, MI	36,238	3,623,812
Greenville, SC	11,763	1,176,317
Harrisburg, PA	19,857	1,985,693
Hartford-Middletown, CT	78,804	7,880,363
Honolulu, HI	187,559	18,755,942
Indianapolis, IN	80,793	8,079,324
Jackson, MS	17,108	1,710,793
Jacksonville, FL	68,795	6,879,494
Knoxville, TN	22,704	2,270,441
Lansing-East Lansing, MI	29,249	2,924,937
Las Vegas, NV	121,276	12,127,602
Lawrence-Haverhill, MA-NH	28,687	2,868,684
Lexington-Fayette, KY	17,493	1,749,275
Little Rock-North Little Rock, AR	25,353	2,535,304
Lorain-Elyria, OH	11,875	1,187,450
Louisville, KY-IN	95,488	9,548,770
Madison, WI	41,154	4,115,362

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FY 1999 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1999 ONE PERCENT TRANSIT ENHANCEMENT	FY 1999 APPORTIONMENT
Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in Population (Continued):		
McAllen-Edinburg-Mission, TX	12,353	1,235,281
Melbourne-Palm Bay, FL	29,990	2,999,044
Memphis, TN-AR-MS	82,401	8,240,086
Mobile, AL	18,555	1,855,467
Modesto, CA	25,581	2,558,100
Montgomery, AL	11,391	1,139,097
Nashville, TN	43,583	4,358,321
New Haven-Meriden, CT	93,962	9,396,199
Ogden, UT	28,631	2,863,135
Oklahoma City, OK	44,330	4,432,983
Omaha, NE-IA	50,402	5,040,205
Orlando, FL	129,812	12,981,167
Oxnard-Ventura, CA	61,070	6,106,959
Pensacola, FL	17,940	1,794,044
Peoria, IL	18,773	1,877,306
Providence-Pawtucket, RI-MA	136,356	13,635,647
Provo-Orem, UT	26,902	2,690,192
Raleigh, NC	26,792	2,679,242
Reno, NV	29,832	2,983,208
Richmond, VA	52,429	5,242,875
Rochester, NY	63,388	6,338,752
Rockford, IL	16,956	1,695,578
Salt Lake City, UT	113,105	11,310,465
Sarasota-Bradenton, FL	35,223	3,522,324
Scranton-Wilkes-Barre, PA	28,433	2,843,266
Shreveport, LA	23,717	2,371,683
South Bend-Mishawaka, IN-MI	19,689	1,968,874
Spokane, WA	53,461	5,346,148
Springfield, MA-CT	56,356	5,635,592
Stockton, CA	32,373	3,237,281
Syracuse, NY	41,060	4,105,993
Tacoma, WA	93,890	9,388,974
Toledo, OH-MI	43,130	4,313,030
Trenton, NJ-PA	37,739	3,773,888
Tucson, AZ	73,681	7,368,088
Tulsa, OK	40,689	4,068,932
West Palm Beach-Boca Raton-Delray Bch, FL	141,108	14,110,838
Wichita, KS	26,588	2,658,823
Wilmington, DE-NJ-MD-PA	59,475	5,947,520
Worcester, MA-CT	38,827	3,882,744
Youngstown-Warren, OH	22,215	2,221,452
TOTAL	$4,275,886	$427,588,610

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FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1999 APPORTIONMENT
Amounts Apportioned to State Governors for Urbanized Areas 50,000 to 200,000 in Population:	
ALABAMA:	$4,582,699
Anniston, AL	442,033
Auburn-Opelika, AL	354,643
Decatur, AL	404,757
Dothan, AL	339,964
Florence, AL	473,623
Gadsden, AL	418,603
Huntsville	1,328,831
Tuscaloosa, AL	820,245
ALASKA:	$0
ARIZONA:	$1,199,549
Flagstaff, AZ	471,905
Yuma, AZ-CA (AZ)	727,644
ARKANSAS:	$1,750,921
Fayetteville-Springdale, AR	483,223
Fort Smith, AR-OK (AR)	657,799
Pine Bluff, AR	444,527
Texarkana, TX-AR (AR)	165,372
CALIFORNIA:	$26,820,118
Antioch-Pittsburg, CA	1,516,742
Chico, CA	662,241
Davis, CA	803,918
Fairfield, CA	976,388
Hemet-San Jacinto, CA	814,596
Hesperia-Apple Valley-Victorville, CA	1,039,187
Indio-Coachella, CA	492,564
Lancaster-Palmdale, CA	1,747,941
Lodi, CA	684,310
Lompoc, CA	420,272
Merced, CA	747,162
Napa, CA	780,703
Palm Springs, CA	972,625
Redding, CA	562,388
Salinas, CA	1,479,937
San Luis Obispo, CA	700,846
Santa Barbara, CA	2,289,533
Santa Cruz, CA	1,183,891
Santa Maria, CA	1,077,116
Santa Rosa, CA	2,088,408
Seaside-Monterey, CA	1,403,367
Simi Valley, CA	1,328,387
Vacaville, CA	806,429
Visalia	921,118
Watsonville, CA	507,460
Yuba City, CA	809,706

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FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1999 APPORTIONMENT
CALIFORNIA (Continued):	
Yuma, AZ-CA (CA)	2,883
COLORADO:	$4,941,869
Boulder, CO	1,099,640
Fort Collins, C0	915,895
Grand Junction, CO	521,475
Greeley, CO	732,548
Longmont, CO	667,563
Pueblo, CO	1,004,748
CONNECTICUT:	$16,212,075
Bristol, CT	778,914
Danbury, CT-NY (CT)	2,715,801
New Britain, CT	1,458,510
New London-Norwich, CT	1,173,673
Norwalk, CT	2,872,513
Stamford, CT-NY (CT)	3,658,880
Waterbury, CT	3,553,784
DELAWARE:	$372,828
Dover, DE	372,828
FLORIDA:	$11,362,965
Deltona, FL	377,814
Fort Pierce, F	905,046
Fort Walton Beach, FL	877,324
Gainesville, FL	1,124,346
Kissimmee, FL	523,686
Lakeland, FL	1,149,424
Naples, FL	756,477
Ocala, FL	508,161
Panama City, FL	762,610
Punta Gorda, FL	498,701
Spring Hill, FL	381,230
Stuart, FL	665,182
Tallahassee, FL	1,281,699
Titusville, FL.	366,897
Vero Beach, FL	464,661
Winter Haven, FL.	719,707
GEORGIA:	$4,974,993
Albany, GA.	616,216
Athens, GA.	590,809
Brunswick, GA	339,990
Macon, GA.	1,104,470
Rome, GA.	346,601

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FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1999 APPORTIONMENT
GEORGIA (Continued):	
Savannah, GA	1,445,082
Warner Robins, GA	531,825
HAWAII:	$1,322,222
Kailua, HI	1,322,222
IDAHO:	$2,616,914
Boise City, ID	1,601,327
Idaho Falls, ID	574,044
Pocatello, ID	441,543
ILLINOIS:	$11,986,789
Alton, IL	647,802
Aurora, IL	1,814,304
Beloit, WI-IL (IL)	82,794
Bloomington-Normal, IL	1,043,611
Champaign-Urbana, IL	1,472,738
Crystal Lake, IL	591,321
Decatur, IL	829,010
Dubuque, IA-IL (IL)	19,311
Elgin, IL	1,308,750
Joliet, IL	1,513,295
Kankakee, IL.	593,925
Round Lake Beach-McHenry, IL-WI (IL)	861,841
Springfield, IL.	1,208,087
INDIANA:	$6,991,216
Anderson, IN	565,089
Bloomington, IN	843,252
Elkhart-GosheN, IN	845,152
Evansville, IN-KY (IN)	1,565,638
Kokomo, IN	569,065
Lafayette-West Lafayette, IN	1,131,334
Muncie, IN	831,673
Terre Haute, IN	640,013
IOWA:	$3,805,936
Cedar Rapids, IA	1,182,758
Dubuque, IA-IL (IA)	575,692
Iowa City, IA	681,475
Sioux City, IA-NE-SD (IA)	629,410
Waterloo-Cedar Falls, IA	736,601
KANSAS:	$1,847,900
Lawrence, KS	699,761
St. Joseph, MO-KS (KS)	5,776
Topeka, KS	1,142,363
KENTUCKY:	$1,456,447
Clarksville, TN-KY (KY)	177,717
Evansville, IN-KY (KY)	218,231

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FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1999 APPORTIONMENT
KENTUCKY (Continued):	
Huntington-Ashland, WV-KY-OH ((KY)	435,190
Owensboro, KY	625,309
LOUISIANA:	$4,313,404
Alexandria, LA	629,449
Houma, LA	442,753
Lafayette, LA	1,089,098
Lake Charles, LA	874,854
Monroe, LA	831,853
Slidell, LA	445,397
MAINE:	$1,877,272
Bangor, ME	385,748
Lewiston-Auburn, ME	448,233
Portland, ME	958,425
Portsmouth-Dover-Rochester, NH-ME (ME)	84,866
MARYLAND	$2,087,616
Annapolis, MD	679,940
Cumberland, MD-WV (MD)	361,629
Frederick, MD	490,610
Hagerstown, MD-PA-WV (MD)	555,437
MASSACHUSETTS	$8,267,918
Brockton, MA	1,510,303
Fall River, MA-RI (MA)	1,473,036
Fitchburg-Leominster, MA	596,940
Hyannis, MA	426,278
Lowell, MA-NH (MA)	1,869,518
New Bedford, MA	1,620,029
Pittsfield, MA	385,881
Taunton, MA	385,933
MICHIGAN:	$7,055,510
Battle Creek, MI	589,268
Bay City, MI	658,307
Benton Harbor, MI	476,171
Holland, MI	534,415
Jackson, MI	657,945
Kalamazoo, MI	1,420,803
Muskegon, MI	866,631
Port Huron, MI	570,347
Saginaw, MI	1,281,623
MINNESOTA:	$2,514,376
Duluth, MN-WI (MN)	611,857
Fargo-Moorhead, ND-MN (MN)	353,780
Grand Forks, ND-MN (MN)	77,536
La Crosse, WI-MN (MN)	37,982
Rochester, MN	690,112
St. Cloud, MN	743,109

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FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1999 APPORTIONMENT
MISSISSIPPI:	$2,158,644
Biloxi-Gulfport, MS	1,336,479
Hattiesburg, MS	416,541
Pascagoula, MS	405,624
MISSOURI:	$2,974,641
Columbia, MO	587,270
Joplin, MO	412,426
Springfield, MO	1,385,436
St. Joseph, MO-KS (MO)	589,509
MONTANA:	$1,980,223
Billings, MT	763,692
Great Falls, MT	712,158
Missoula, MT	504,373
NEBRASKA:	$2,201,399
Lincoln, NE	2,106,170
Sioux City, IA-NE-SD (NE)	95,229
NEVADA:	$0
NEW HAMPSHIRE:	$2,673,292
Lowell, MA-NH (NH)	5,472
Manchester, NH	1,120,686
Nashua, NH	896,176
Portsmouth-Dover-Rochester, NH-ME (NH)	650,958
NEW JERSEY:	$2,025,512
Atlantic City, NJ	1,459,929
Vineland-Millville, NJ	565,583
NEW MEXICO:	$1,103,002
Las Cruces, NM	612,722
Santa Fe, NM	490,280
NEW YORK:	$6,119,802
Binghamton, NY	1,536,094
Danbury, CT-NY (NY)	20,820
Elmira, NY	630,769
Glens Falls, NY	433,770
Ithaca, NY	437,794
Newburgh, NY	568,490
Poughkeepsie, NY	1,194,188
Stamford, CT-NY (NY)	141
Utica-Rome, NY	1,297,736
NORTH CAROLINA:	$9,934,916
Asheville, NC	766,849
Burlington, NC	556,284
Gastonia, NC	814,533

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FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1999 APPORTIONMENT
NORTH CAROLINA (Continued):	
Goldsboro, NC	423,006
Greensboro, NC	1,751,898
Greenville, NC	487,046
Hickory, NC	464,508
High Point, NC	783,333
Jacksonville, NC	756,277
Kannapolis, NC	545,967
Rocky Mount, NC	436,434
Wilmington, NC	713,848
Winston-Salem, NC	1,434,933
NORTH DAKOTA:	$1,930,338
Bismarck, ND	556,628
Fargo-Moorhead, ND-MN (ND)	805,027
Grand Forks, ND-MN (ND)	568,683
OHIO:	$5,307,535
Hamilton, OH	1,097,021
Huntington-Ashland, WV-KY-OH (OH)	279,360
Lima, OH	599,557
Mansfield, OH	578,849
Middletown, OH	754,261
Newark, OH	459,562
Parkersburg, WV-OH (OH)	68,051
Sharon, PA-OH (OH)	44,874
Springfield, OH	872,476
Steubenville-Weirton, OH-WV-PA (OH)	313,885
Wheeling, WV-OH (OH)	239,639
OKLAHOMA:	$826,089
Fort Smith, AR-OK (OK)	14,492
Lawton, OK	811,597
OREGON:	$4,308,032
Eugene-Springfield, OR	2,027,885
Longview, WA-OR (OR)	13,486
Medford, OR	626,710
Salem, OR	1,639,951
PENNSYLVANIA:	$11,261,967
Altoona, PA	769,349
Erie, PA	1,979,133
Hagerstown, MD-PA-WV (PA)	6,780
Johnstown, PA	709,460
Lancaster, PA	1,789,392
Monessen, PA	486,965
Pottstown, PA	462,103
Reading, PA	2,088,802
Sharon, PA-OH (PA)	323,516
State College, PA	673,313
Steubenville-Weirton, OH-WV-PA (PA)	2,352

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FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1999 APPORTIONMENT
PENNSYLANIA (Continued):	
Williamsport, PA	564,417
York, PA	1,406,385
PUERTO RICO:	$10,403,677
Aguadilla, PR	910,181
Arecibo, PR	850,450
Caguas, PR	2,227,209
Cayey, PR	658,503
Humacao, PR	569,922
Mayaguez, PR	1,224,476
Ponce, PR	2,724,832
Vega Baja-Manati, PR	1,238,104
RHODE ISLAND:	$662,223
Fall River, MA-RI (RI)	151,810
Newport, RI	510,413
SOUTH CAROLINA:	$2,804,442
Anderson, SC	377,175
Florence, SC	387,954
Myrtle Beach, SC	406,842
Rock Hill, SC	431,979
Spartanburg, SC	753,035
Sumter, SC	447,457
SOUTH DAKOTA:	$1,392,487
Rapid City, SD	443,486
Sioux City, IA-NE-SD (SD)	12,434
Sioux Falls, SD	936,567
TENNESSEE:	$2,155,124
Bristol, TN-Bristol, VA (TN)	201,439
Clarksville, TN-KY (TN)	491,143
Jackson, TN	371,749
Johnson City, TN	566,666
Kingsport, TN-VA (TN)	524,127
TEXAS:	$19,954,468
Abilene, TX	707,952
Amarillo, TX	1,313,093
Beaumont, TX	903,122
Brownsville, TX	1,312,657
Bryan-College Station, TX	879,269
Denton, TX	474,957
Galveston, TX	503,821
Harlingen, TX	645,136
Killeen, TX	1,233,967
Laredo, TX	1,558,455
Lewisville, TX	548,297
Longview, TX	539,455

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FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1999 APPORTIONMENT
TEXAS (Continued):	
Lubbock, TX	1,536,339
Midland, TX	673,147
Odessa, TX	746,765
Port Arthur, TX	814,606
San Angelo, TX	699,989
Sherman-Denison, TX	350,390
Temple, TX	397,790
Texarkana, TX-AR (TX)	320,984
Texas City, TX	853,238
Tyler, TX	667,208
Victoria, TX	462,523
Waco, TX	1,007,622
Wichita Falls, TX	803,686
UTAH:	$398,827
Logan, UT	398,827
VERMONT:	$699,824
Burlington, VT	699,824
VIRGINIA:	$4,645,393
Bristol, TN-Bristol, VA (VA)	143,411
Charlottesville, VA	667,960
Danville, VA	379,321
Fredericksburg, VA	445,333
Kingsport, TN-VA (VA)	27,075
Lynchburg, VA	635,465
Petersburg, VA	805,595
Roanoke, VA	1,541,233
WASHINGTON:	$4,389,977
Bellingham, WA	517,225
Bremerton, WA	1,001,963
Longview, WA-OR (WA)	437,656
Olympia, WA	779,534
Richland-Kennewick-Pasco, WA	813,227
Yakima, WA	840,372
WEST VIRGINIA	$3,373,920
Charleston, WV	1,357,272
Cumberland, MD-WV (WV)	16,233
Hagerstown, MD-PA-WV (WV)	4,100
Huntington-Ashland, WV-KY-OH (WV)	762,026
Parkersburg, WV-OH (WV)	490,080
Steubenville-Weirton, OH-WV-PA (WV)	210,854
Wheeling, WV-OH (WV)	533,355
WISCONSIN:	$9,236,235
Appleton-Neenah, WI	1,691,318
Beloit, WI-IL (WI)	362,538
Duluth, MN-WI (WI)	158,801

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FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

URBANIZED AREA/STATE	FY 1999 APPORTIONMENT
WISCONSIN (Continued):	
Eau Claire, WI	662,467
Green Bay, WI	1,284,567
Janesville, WI	487,538
Kenosha, WI	887,712
La Crosse, WI-MN (WI)	704,740
Oshkosh, WI	615,040
Racine, WI	1,371,072
Round Lake Beach-McHenry, IL-WI (WI)	514
Sheboygan, WI	579,479
Wausau, WI	430,449
WYOMING:	$966,944
Casper, WY	443,561
Cheyenne, WY	523,383
TOTAL	$244,250,470

TABLE 5

FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5311 NONURBANIZED AREA FORMULA APPORTIONMENTS, AND SECTION 5311(b) RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) ALLOCATIONS

STATE	FY 1999 SECTION 5311 APPORTIONMENT	FY 1999 SECTION 5311(b) RTAP APPORTIONMENT
Alabama	$4,248,431	$113,892
Alaska	633,533	72,291
America Samoa	90,298	11,039
Arizona	1,859,852	86,404
Arkansas	3,396,444	104,087
California	8,289,613	160,399
Colorado	1,769,501	85,364
Connecticut	1,605,104	83,472
Delaware	400,435	69,608
Florida	5,328,929	126,327
Georgia	6,211,659	136,486
Guam	257,058	12,958
Hawaii	697,164	73,023
Idaho	1,406,508	81,187
Illinois	5,698,850	130,584
Indiana	5,504,960	128,353
Iowa	3,540,844	105,749
Kansas	2,816,629	97,415
Kentucky	4,649,640	118,510
Louisiana	3,845,589	109,256
Maine	1,855,647	86,355
Maryland	2,316,686	91,661
Massachusetts	2,482,783	93,573
Michigan	6,723,802	142,380
Minnesota	3,869,159	109,528
Mississippi	3,775,797	108,453
Missouri	4,506,574	116,863
Montana	1,139,382	78,112
Nebraska	1,719,183	84,785
Nevada	561,287	71,459
New Hampshire	1,486,141	82,103
New Jersey	2,124,867	89,454
New Mexico	1,670,467	84,224
New York	7,479,788	151,080
North Carolina	7,945,744	156,442
North Dakota	842,624	74,697
Northern Marianas	83,680	10,963
Ohio	8,089,320	158,094
Oklahoma	3,458,101	104,797
Oregon	2,745,762	96,599
Pennsylvania	9,023,720	168,848
Puerto Rico	2,696,572	96,033
Rhode Island	345,435	68,975
South Carolina	3,976,885	110,767
South Dakota	1,027,093	76,820
Tennessee	5,133,703	124,080
Texas	10,838,678	189,737
Utah	778,593	73,960
Vermont	918,310	75,568
Virgin Islands	196,548	12,262
Virginia	4,551,526	117,380
Washington	3,189,197	101,702
West Virginia	2,711,736	96,208
Wisconsin	4,685,562	118,923
Wyoming	655,329	72,542
TOTAL	$177,856,722	$5,401,831

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TABLE 6

FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5310 ELDERLY AND PERSONS WITH DISABILITIES APPORTIONMENTS

STATE	FY 1999 SECTION 5310 APPORTIONMENT
Alabama	$1,162,378
Alaska	185,973
America Samoa	52,401
Arizona	1,025,265
Arkansas	813,232
California	6,281,547
Colorado	796,036
Connecticut	911,652
Delaware	278,916
District of Columbia	276,873
Florida	4,239,930
Georgia	1,506,200
Guam	132,985
Hawaii	353,839
Idaho	362,024
Illinois	2,742,062
Indiana	1,440,366
Iowa	873,989
Kansas	733,280
Kentucky	1,114,127
Louisiana	1,117,719
Maine	451,757
Maryland	1,122,989
Massachusetts	1,615,932
Michigan	2,346,547
Minnesota	1,138,772
Mississippi	790,171
Missouri	1,460,639
Montana	332,442
Nebraska	518,052
Nevada	386,321
New Hampshire	365,158
New Jersey	1,939,313
New Mexico	456,044
New York	4,489,066
North Carolina	1,712,480
North Dakota	283,521
Northern Marianas	52,193
Ohio	2,861,507
Oklahoma	961,937
Oregon	894,558
Pennsylvania	3,430,103
Puerto Rico	848,793
Rhode Island	402,491
South Carolina	929,939
South Dakota	305,884
Tennessee	1,371,842
Texas	3,542,449
Utah	425,226
Vermont	253,482
Virgin Islands	135,138
Virginia	1,426,983
Washington	1,280,162
West Virginia	680,485
Wisconsin	1,306,904
Wyoming	216,148
TOTAL	$67,136,222

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TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5309 FIXED GUIDEWAY MODERNIZATION APPORTIONMENTS

AREA	FY 1999 APPORTIONMENT
AZ Phoenix	$1,276,627
CA Los Angeles	14,941,327
CA Sacramento	2,028,850
CA San Diego	5,443,049
CA San Francisco	56,673,547
CA San Jose	7,206,601
CO Denver	1,072,768
CT Hartford	798,943
CT Southwestern Connecticut	33,739,745
DE Wilmington	661,929
DC Washington	31,797,959
FL Ft. Lauderdale	2,296,438
FL Jacksonville	55,928
FL Miami	6,789,118
FL Tampa	36,639
FL West Palm Beach	1,833,555
GA Atlanta	14,855,414
HI Honolulu	528,313
IL Chicago/Northwestern Indiana	113,008,639
LA New Orleans	2,305,868
MD Baltimore	4,491,596
MD Baltimore Commuter Rail	15,309,485
MA Boston	58,752,122
MA Lawrence-Haverhill	1,011,106
MI Detroit	318,620
MN Minneapolis	2,433,932
MO Kansas City	15,337
MO St. Louis	1,501,083
NJ Northeastern New Jersey	73,118,448
NJ Trenton	933,499
NY Buffalo	868,600
NY New York	300,814,329
OH Cleveland	11,840,591
OH Dayton	2,965,142
PA Philadelphia/Southern New Jersey	81,842,522
PA Pittsburgh	19,350,730
PR San Juan	1,326,488
OR Portland	2,267,470
RI-MA- Providence	1,800,384
TN Chattanooga	58,594
TX Dallas	602,792
TX Houston	3,852,288
VA Norfolk	464,097
WA Seattle	11,618,706
WA Tacoma	609,080
WI Madison	510,702
TOTAL	$896,029,000

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TABLE 8

FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5309 NEW START ALLOCATIONS

	PROJECT LOCATION AND DESCRIPTION	*FY 1999 ALLOCATION*
AK/HI	Alaska or Hawaii Ferry Projects	$10,322,550
AL	Birmingham- Alternatives Analysis & Preliminary Engineering	992,550
AZ	Phoenix- Metropolitan Area Transit Project	4,962,765
AR	Little Rock- Arkansas River Rail Project	992,550
CA	Sacramento- South LRT Extension Project	23,305,140
CA	San Francisco- BART Extension to the Airport	39,702,110
CA	San Jose- Tasman West LRT	26,798,925
CA	San Diego- Mission Valley East Light Rail Transit Project	1,488,830
CA	San Diego- Mid-Coast Corridor Project	1,985,100
CA	San Diego- Oceanside-Escondido Passenger Rail Project	2,977,660
CA	Los Angeles- MOS-3 Project	37,717,000
CA	Los Angeles- Mid-City and East Side Projects	7,940,420
CA	Orange County-Transitway Project	2,481,380
CA	Riverside County- San Jacinto Branch Line Project	496,280
CA	San Bernardino- Metrolink Extension Project	992,550
CO	Denver- Southwest Corridor LRT Extension Project	39,702,110
CO	Denver- Southeast Multimodal Corridor Project	496,280
CO	North Front Range Corridor Feasibility Study	496,280
CT	Hartford Light Rail Project	1,488,830
CT	Hartford - Old Saybrook Project	496,280
CT	New London- Waterfront Access Project	496,280
CT	Stamford- Fixed Guideway Connector	992,550
FL	FortLauderdale- Tri-County Commuter Rail Project	3,970,210
FL	Miami Metro-Dade Transit East-West Corridor Project	2,977,660
FL	Miami Metro Dade- North 27th Avenue Corridor Project	2,977,660
FL	Tampa Bay- Regional Rail Project	992,550
FL	Orlando- Lynx Light Rail Project	17,369,675
GA	Atlanta- South DeKalb-Lindbergh Corridor LRT Project	992,550
GA	Atlanta-North Springs Project	51,721,925
GA	Savannah- Water Taxi	496,280
HI	Honolulu- Major Investment Analysis of Transit Alternatives	2,977,660
IA	Sioux City- Micro Rail Trolley System	248,140
IL	Chicago- CTA Ravenswood and Douglas Branch Lines Projects	2,977,660
IL	Chicago- Metra Commuter Rail Exts. & Upgrades Projects	5,955,320
IN	Northern Indiana- South Shore Commuter Rail Project	2,977,660
KS	Kansas City Area- Johnson County, KS, I-35 Commuter Rail Project	992,550
LA	New Orleans- Canal Street Corridor Project	21,836,160
LA	New Orleans- Desire Streetcar Project	1,985,100
MA	Boston- South Boston Piers MOS-2 Project	53,580,975
MA	Boston- Urban Ring Project	744,415

TABLE 8

FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5309 NEW START ALLOCATIONS

	PROJECT LOCATION AND DESCRIPTION	*FY 1999 ALLOCATION*
MA	Boston- North-South Rail Link	496,280
MA	Boston- North Shore Corridor Project	$992,550
MD	MARC Commuter Rail Project	16,914,100
MD	Baltimore- Central Downtown Transit Alternatives MIS	496,280
MD	Baltimore- Light Rail Double Track Project	992,550
MD	Wash.DC/MD- Metrorail - Largo Blue Line Extension Project	992,550
MD	Wash, DC/MD- Route 5 Corridor	992,550
MN	Twin Cities- Transitways Project	16,873,400
MI	Southeast Michigan Commuter Rail Viability Project	198,510
MO/IL	St. Louis- St. Clair MetroLink Extension Project	34,739,350
MO	St. Louis-Jefferson City-Kansas City Commuter Rail Project	496,280
MO	Kansas City- Commuter Rail Study	496,280
NC	Charlotte- North-South Corridor Transitway Project	2,977,660
NC	Raleigh-Durham-Chapel Hill- Triangle Transit Project	9,925,525
NE	Omaha- Trolley System	992,550
NJ	New Jersey Urban Core Newark-Elizabeth Rail Link Project	5,955,320
NJ	New Jersey Urban Core- Hudson-Bergen LRT Project	69,478,700
NJ	West Trenton Rail Project	992,550
NM	Albuquerque Light Rail Project	4,962,765
NV	Las Vegas- Clark County, Nevada Fixed Guideway System	3,970,210
NY	New York- LIRR East Side Access Project	23,821,265
OH	Dayton- Light Rail Study	992,550
OH	Cincinnati- Northeast/Northern Kentucky Rail Line Project	1,786,595
OH	Cleveland- Berea Red Line Extension to Hopkins International Airport Project	992,550
OH	Cleveland- Euclid Corridor Improvement Project	1,985,100
OH	Canton-Akron-Cleveland Commuter Rail Project	2,183,615
OH	Northeast Ohio Commuter Rail Study, Phase 2	496,280
OR	Portland- Westside-Hillsboro Project	25,526,475
PA	Harrisburg- Capitol Area Transit/Corridor One Project	992,550
PA	Pittsburgh- Allegheny County Stage II Light Rail Project	3,970,210
	Pittsburgh- North Shore CBD Transit Options MIS	992,550
PA	Philadelphia- SEPTA Cross County Metro Project	992,550
PA	Philadelphia-Reading -SEPTA Schuylkill Valley Metro Project	2,977,660
PR	San Juan- Tren Urbano	19,851,055
SC	Charleston- Monobeam Rail Project	2,183,615
TN	Memphis- Medical Center Rail Extension Project	2,183,615
TN	Nashville- Regional Commuter Rail Project	992,550
TN	Knoxville- Electric Transit Project	1,488,830
TX	Austin- Capital Metro Project	992,550

TABLE 8

FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5309 NEW START ALLOCATIONS

	PROJECT LOCATION AND DESCRIPTION	*FY 1999 ALLOCATION*
TX	Dallas- DART North Central Light Rail Extension Project	15,880,850
TX	Dallas-Forth Worth- RAILTRAN Project	11,910,635
TX	Houston- Regional Bus Project	$59,225,625
TX	Houston- Advanced Regional Transit Project	1,985,100
UT	Salt Lake City- South LRT Project	69,478,700
UT	Salt Lake City- Airport to University(West-East)Light Rail Project	4,962,765
VT	Burlington-Essex- Commuter Rail Project	1,985,100
VA	Norfolk-Virginia Beach Regional Rail Project	7,940,425
VA	Dulles Corridor Project	16,873,400
VA	Virginia Railway Express-Woodbridge Station Improvements Project	1,985,100
WA	King County- Elliot Bay Water Taxi	248,140
WA	Seattle- Puget Sound RTA Link Light Rail Project	4,962,765
WA	Seattle- Puget Sound RTA Sounder Commuter Rail Project	40,694,660
WA	Spokane- Light Rail Project	992,550
WI	Kenosha-Racine-Milwaukee Commuter Rail Project	496,280
WV	Morgantown- Fixed Guideway Modernization Project	3,970,210
	Total (All Allocations Above):	$896,029,000

Table 8A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 NEW START ALLOCATIONS

	PROJECT LOCATION AND DESCRIPTION	FY 1997 CARRYOVER	FY 1998 CARRYOVER	PRIOR YEAR UNOBLIGATED ALLOCATION
AK	Hollis- Ketchikan Ferry Project	$6,345,416	$0	$6,345,416
AZ	Phoenix- Metropolitan Area Transit	0	3,987,062	3,987,062
AR	Little Rock- Junction Bridge Project	1,806,046	0	1,806,046
CA	Los Angeles- Metrorail- MOS-3	0	23,907,426	23,907,426
CA	San Bernardino- Metrolink Extension	0	996,766	996,766
CA	San Diego Mission Valley East Extension	0	996,766	996,766
CA	San Diego Mid-Coast Extension	1,489,534	1,495,150	2,984,684
CA	San Diego Oceanside-EscondidoPassenger Rail	0	2,990,300	2,990,300
CO	Roaring Fork Valley Rail Project	0	1,993,530	1,993,530
CT	Hartford- Griffin Light Rail Project	993,023	0	993,023
FL	Miami- North 27th Avenue Project	993,023	4,983,828	5,976,851
FL	Miami- Metro Dade East-West Corridor Project	1,489,534	4,983,828	6,473,362
FL	Orlando- Lyxn Light Rail Project	0	9,095,587	9,095,587
IL	Chicago- Wisconsin Central Cmmuter Rail	0	2,990,300	2,990,300
IN	South Shore Commuter Rail Project	0	3,987,062	3,987,062
LA	New Orleans- Canal Street Corridor Project	7,944,183	5,980,594	13,924,777
LA	New Orleans- Desire Streetcar Project	0	1,993,530	1,993,530
MA	Boston- S. Boston Piers Transitway (MOS-2)	0	46,100,413	46,100,413
MD	MARC- Commuter Rail Improvements	0	30,899,736	30,899,736
MN	Twin Cities- Transitways Projects	0	10,461,188	10,461,188
MO	St. Louis- Metrolink Project	3,405,809	0	3,405,809
MS	Jackson- Intermodal Corridor	5,461,626	2,990,300	8,451,926
NC	Research Triangle Park- Regional Transit Plan	693,384	11,961,188	12,654,572
NJ	Burlington-Gloucester Line [*]	0	0	1,488,750
NY	New York- LIRR Eastside Access Project	0	19,935,314	19,935,314
NY	New York- Whitehall Ferry Terminal	1,675,037	2,491,914	4,166,951
NY	New York- St. George Ferry	3	2,491,914	2,491,917
NY	New York- Nassau Hub Rail Link EIS	0	498,383	498,383
NV	Las Vegas, Clark County Fixed Guideway Project	0	4,983,828	4,983,828
OH	Cincinnati- NE/N. KY Rail Line Project	0	498,383	498,383
OH	Cleveland- Berea Red Line Extension to Airport	0	697,736	697,736
OH	Canton-Akron-Cleveland Commuter Rail	0	1,993,530	1,993,530
OH	Toledo- Rail Project	0	996,766	996,766
OK	Oklahoma City- MAPS Corridor Transit System	0	1,594,825	1,594,825
PA	Pittsburgh- Airport Busway Phase I	0	4,983,828	4,983,828
PA	Scranton- Laurel Rail Line Project	0	498,383	498,383
PR	San Juan- Tren Urbano	0	14,951,485	14,951,485
SC	Charleston Monobeam Project	0	1,495,150	1,495,150
TN	Memphis- Regional Rail Plan	0	2	2
TX	Austin- Capital Metro	0	996,766	996,766
TX	Dallas- North Central LRT Extension	3	10,964,424	10,964,427
TX	Dallas- Ft. Worth RAILTRAN	15,143,599	7,974,126	23,117,725
TX	Galveston- Rail Trolley System Project	0	1,993,530	1,993,530
TX	Houston- Regional Bus Plan	40,306,799	50,934,727	91,241,526
UT	Salt Lake City- Regional Commuter Rail		3,987,062	3,987,062
VA	Virginia Railway Express- Commuter Rail Project	2,979,069	1,993,530	4,972,599
VA	Norfolk-Virginia beach Regional Rail Project		1,993,530	1,993,530
VT	Burlington-Charlotte Commuter Rail	993,023	0	993,023
VT	Burlington-Essex Commuter Rail		4,983,828	4,983,828
WA	Seattle-Renton-Tacoma Light Rail Project	2,979,069	17,941,782	20,920,851
	TOTAL (All Allocations Above).....	$94,698,180	$334,669,300	$430,856,230

[*] Carryover totals include FY 95 funds in the amount of $1,488,750 extended for obligation by the FY 99 Appropriations Conference Report for Burlington - Glouchester, NJ Commuter Rail.

99FR-T8/4

TABLE 9

FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PROJECT	FY 1999 ALLOCATIONS
ALASKA		
Anchorage	Ship Creek Intermodal facility	$4,267,750
Fairbanks	Intermodal rail/bus transfer facility	1,985,000
North Slope Borough	Buses	496,250
Whittier	Intermodal facility and pedestrian overpass	694,750
ALABAMA		
Birmingham	Intermodal facility	1,985,000
Birmingham-Jefferson County	Buses	1,240,625
Dothan Wiregrass Transit Authority	Demand response shuttle vehicles and transit facility	496,250
Huntsville	Intermodal space centers	4,962,500
Huntsville	Transit facility	992,500
Jasper	Jasper buses	49,625
Lee-Russell Council	Buses	784,075
Mobile	GM&O building	4,962,500
Montgomery	Union Station intermodal center and buses	4,962,500
Pritchard	Bus transfer facility	496,250
Tuscaloosa	Intermodal center	1,935,375
University of North Alabama	Pedestrian walkways	794,000
ARKANSAS		
Statewide	Bus needs	1,488,750
Arkansas Highway and Transit Department	Buses	198,500
Fayetteville	University of Arkansas Transit System buses	496,250
Hot Springs	Transportation depot and plaza	555,800
Little Rock	Buses	297,750
ARIZONA		
Phoenix	Bus and bus facilities	3,970,000
Tucson	Alternatively fueled buses	1,985,000
Tucson	Intermodal facility	992,500
CALIFORNIA		
Central Contra Costa County	Transit vans	198,500
Culver City	CityBus buses	1,240,625
Davis	Unitrans transit maintenance facility	620,313
Davis/Sacramento Area	Hydrogen bus technology program	942,875
Folsom	Multimodal facility	992,500
Healdsburg	Intermodal facility	992,500
Humboldt	Intermodal facility	992,500
Huntington Beach	Buses	198,500
I-5 corridor	Intermodal transit centers	2,481,250
Lake Tahoe	Intermodal transit centers	496,250
Livermore	Automatic vehicle locator program	992,500
Los Angeles County Metropolitan Transportation Authority	Buses	2,977,500
Los Angeles Foothills Transit	Maintenance facility	992,500
Los Angeles	Municipal transit operators consortium	2,481,250
Los Angeles	Union Station Gateway Intermodal Transit Center	1,240,625
Modesto	Bus maintenance facility	1,344,838
Monterey, Monterey-Salinas	Buses	620,313
Morango Basin	Transit Authority bus facility	645,125
North San Diego County Transit District	Buses	1,736,875
Perris	Bus maintenance facility	1,240,625
Riverside Transit Agency	Buses and facilities and ITS applications	992,500
Sacramento	CNG buses	1,240,625
San Bernardino	Buses	992,500
San Diego	City College multimodal center (12th Avenue/College Station)	992,500
San Fernando Valley	Smart shuttle buses	297,750
San Francisco	Islais Creek maintenance facility	1,240,625
San Joaquin (Stockton)	Buses and bus facilities	992,500
Santa Clara Valley Transportation Authority	Buses and bus facilities	992,500
Santa Clarita	Transit maintenance facility	2,233,125
Santa Cruz	Metropoltian bus facilities	620,313
Santa Cruz	Transit facility	992,500
Santa Rosa, Cotati, and Rohnert Park	Facilities	744,375

TABLE 9

FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PROJECT	FY 1999 ALLOCATIONS
CALIFORNIA (cont'd)		
Santa Rosa/Cotati	Intermodal transportation facilities	$744,375
Solano Links	Links intercity transit consortium	992,500
Ukiah	Transit Center	496,250
Windsor	Intermodal Facility	744,375
Woodland Hills	Warner Center Transportation Hub	322,563
Yolo County	Bus facility	1,191,000
COLORADO		
Boulder/Denver	RTD buses	620,313
Colorado	Buses and bus facilities	6,749,000
Denver	Stapleton Intermodal Center	1,240,625
CONNECTICUT		
Hartford	Transportation Access Project	794,000
New Haven	Bus facility	2,233,125
Norwich	Buses	2,233,125
Waterbury	Bus facility	2,233,125
DISTRICT /COLUMBIA		
	Fuel cell bus and bus facilities program (section 3015(b))	4,813,625
Washington, D.C.	Intermodal Transportation Center	2,481,250
DELAWARE Statewide	Buses	992,500
FLORIDA		
Broward County	Buses	992,500
Clearwater	Multimodal facility	2,481,250
Daytona Beach	Intermodal Center	2,481,250
Gainesville	Buses and equipment	1,488,750
Jacksonville	Buses and bus facilities	992,500
Lakeland	Citrus Connection transit vehicles and related equipment	1,240,625
Lynx	Buses and bus facilities	992,500
Miami	Bus security and surveillance	992,500
Miami Beach	Multimodal transit center	992,500
Miami Beach	Electric Shuttle Service	744,375
Miami-Dade	Buses	2,233,125
Orlando	Intermodal Facility	2,481,250
Tampa	Hartline buses	1,240,625
GEORGIA		
Atlanta	MARTA buses	11,909,994
Savannah/Chatham Area Transit	Bus transfer centers and buses	3,473,750
HAWAII		
Honolulu	Bus facility and buses	3,225,625
ILLINOIS		
Statewide	Buses and bus-related equipment	6,749,000
Rock Island	Buses	2,481,250
INDIANA		
City of East Chicago	Buses	198,500
Gary	Transit Consortium buses	1,240,625
Indianapolis	Buses	4,962,500
South Bend	Urban Intermodal Transportation Facility	1,240,625
IOWA		
Fort Dodge	Intermodal Facility (Phase II)	878,363
Statewide	Buses and bus facilities	2,977,500
Iowa/Illinois Transit Consortium	Bus safety and security	992,500
Sioux City	Park and ride facility	1,786,500
KANSAS		
Johnson County	Bus maintenance/ operations facility	1,985,000
KENTUCKY		
Louisville, Kentucky University of Louisville and River City	Buses	2,977,500
Northern Kentucky Area Development District	Senior citizen buses	99,250
Owensboro	Buses	198,500
Southern and Eastern Kentucky	Buses and bus facilities	1,985,000
LOUISIANA Statewide	Buses and bus-related facilities	
Baton Rouge	Buses and bus-related facilities	198,500

TABLE 9

FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PROJECT	FY 1999 ALLOCATIONS
LOUISIANA Statewide (cont'd)		
Jefferson Parish	Buses and bus-related facilities	$347,375
Lafayette	Buses and bus-related facilities	421,813
Louisiana DOTD	Including vans	645,125
Monroe	Buses and bus-related facilities	446,625
New Orleans	Buses and bus-related facilities	8,014,438
Shreveport	Buses and bus-related facilities	397,000
State infrastructure bank, transit account	Buses and bus-related facilities	347,375
St. Tammany Parish	Buses and bus-related facilities	99,250
MASSACHUSETTS		
Essex and Middlesex	Buses	3,104,540
New Bedford/Fall River	Mobile Access to health care	248,125
Pittsfield	Intermodal center	4,565,500
Springfield	Union Station	1,240,625
Westfield	Intermodal center	1,985,000
Worcester	Union Station Intermodal Transportation Center	2,481,250
MARYLAND statewide	Bus facilities and buses	9,925,000
MICHIGAN		
Lansing	CATA bus technology improvements	595,500
Michigan statewide	Buses	9,925,000
MINNESOTA		
Duluth Transit Authority	Community circulation vehicles	992,500
Duluth Transit Authority	Intelligent transportation systems	496,250
Duluth Transit Authority	Transit Hub	496,250
Northstar Corridor	Intermodal Facilities and buses	5,955,000
Twin Cities Area Metro Tranist	Buses and bus facilities	9,428,750
MISSOURI		
Kansas City	Union Station redevelopment	2,481,250
OATS Transit		2,481,250
Southwest Missouri State University	Park and ride facility	992,500
St. Louis	Bi-state Intermodal Center	1,240,625
Statewide	Bus and bus facilities	4,466,250
MISSISSIPPI		
Harrison County	Multimodal center/hybrid electric shuttle buses	1,885,750
High Street, Jackson	Intermodal Center	1,985,000
Jackson	Buses and facilities	1,588,000
Butte	Bus replacements	1,488,750
NEW HAMPSHIRE		
Berlin	Tri-County Community Action transit garage	119,100
Carroll County	Transportation alliance buses	198,500
Concord Area Transit	Buses	744,375
Greater Laconia Transit Agency	Buses	446,625
Keene HCS community care	Buses and equipment	99,250
Lebanon	Advance transit buses	148,875
Statewide	Transit systems	992,500
NEW JERSEY		
New Jersey Transit	Jitney shuttle buses	1,736,875
Newark, Morris & Essex Station	Access and buses	1,240,625
South Amboy	Regional Intermodal Transportation Initiative	1,240,625
Statewide	Alternatively fueled vehicles	7,443,750
NEW MEXICO		
Albuquerque	Buses, paratransit vehicles, and bus facility	3,721,875
Northern New Mexico	Park and ride facilities	1,985,000
NEVADA		
Clark County Regional Transportation Commission	Buses and bus facilities	2,595,388
Reno	RTC transit passenger and facility security improvements	1,240,625
Washoe County	Transit improvements	2,233,125
NEW YORK		
Babylon	Intermodal Center	1,240,625
Brookhaven Town	Elderly and disabled buses and vans	223,313
Brooklyn-Staten Island	Mobility Enhancement buses	794,000
Broome County	Buses and fare collection equipment	893,250

TABLE 9

FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PROJECT	FY 1999 ALLOCATIONS
NEW YORK (cont'd)		
Buffalo	Auditorium Intermodal Center	$2,977,500
Dutchess County	Loop System buses	517,093
East Hampton	Elderly and disabled buses and vans	99,250
Ithaca	TCAT bus technology improvements	1,240,625
Long Beach	Central bus facility	744,375
Long Island	CNG transit vehicles and facilities and bus replacement	1,240,625
Mineola/Hicksville	LIRR Intermodal Centers	1,240,625
Nassau County	CNG buses	992,500
New York City	Midtown West Ferry Terminal	1,488,750
New York	New York, West 72nd St. Intermodal Station	1,736,875
Niagara Frontier Transportation Authority	Hublink	496,250
Rensselaer	Intermodal bus facility	992,500
Riverhead	Elderly and disabled buses and vans	124,063
Rochester	Central bus facility	992,500
Rome	Intermodal Center	397,000
Shelter Island	Elderly and disabled buses and vans	99,250
Smithtown	Elderly and disabled buses and vans	124,063
Southampton	Elderly and disabled buses and vans	124,063
Southold	Elderly and disabled buses and vans	99,250
Suffolk County	Elderly and disabled buses and vans	99,250
Syracuse	CNG buses and facilities	1,985,000
Ulster County	Bus facilites and equipment	992,500
Utica and Rome	Bus facilities and buses	496,250
Utica	Union Station	2,084,250
Westchester County	Bee-Line transit system fareboxes	971,658
Westchester County	Bee-Line transit system shuttle buses	992,500
Westchester County	DOT articulated buses	1,240,625
NORTH CAROLINA		
Greensboro	Multimodal Center	3,314,950
Greensboro	Transit Authority buses	1,488,750
Greensboro	Transit Authority small buses and vans	318,593
Statewide	Buses and bus facilities	4,962,500
NORTH DAKOTA		
Statewide	Buses and related facilities	1,985,000
OHIO		
Cleveland	Triskett Garage bus maintenance facility	620,313
Dayton	Multimodal Transportation Center	620,313
Statewide	Buses and bus facilities	11,909,994
Toledo Mud Hens transit center study	Mud Hens transit center study	198,500
OKLAHOMA statewide	Bus facilities and buses	4,962,500
OREGON		
Lane County	Bus Rapid Transit	4,367,000
Portland	Tri-Met buses	1,736,875
Rogue Valley Transit District	Bus purchase	992,500
Salem Area Mass Transit System	Buses	992,500
Wilsonville	Buses and shelters	397,000
PENNSYLVANIA		
Altoona	Bus testing facility (section 3009)	2,977,500
Altoona	Metro Transit Authority buses and transit system improvements	835,685
Altoona	Metro Transit Authority Logan Valley Mall Suburban Transfer Center	79,400
Altoona	Metro Transit Authority Transit Center improvements	420,820
Altoona	Pedestrian crossover	794,000
Armstrong County-Mid-County	Bus facilities and buses	148,875
Beaver County	Bus facility	992,500
Bradford County	Endless Mountain Transportation Authority buses	992,500
Cambria County	Bus facilities and buses	570,688
Centre Area Transportation Authority	Buses	1,240,625
Chambersburg Transit Authority	Buses	297,750
Chambersburg Transit Authority	Intermodal Center	992,500

TABLE 9

FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PROJECT	FY 1999 ALLOCATIONS
PENNSYLVANIA (cont'd)		
Chester County	Paoli Transportation Center	$992,500
Crawford Area Transportation	Buses	496,250
Erie	Metropolitan Transit Authority buses	992,500
Fayette County	Intermodal Facilities and buses	1,260,475
Lackawanna County Transit System	Buses	595,500
Mercer County	Buses	744,375
Monroe County Transportation Authority	Buses	992,500
Philadelphia	Frankford Transportation Center	4,962,500
Philadelphia	Intermodal 30th Street Station	1,240,625
Philadelphia	Regional Transportation System for Elderly and Disabled	744,375
Reading	BARTA Intermodal Transportation Facility	1,736,875
Red Rose	Transit Bus Terminal	992,500
Robinson Towne Center	Intermodal Facility	1,488,750
Schuykill County	Buses	218,350
Somerset County	Bus facilities and buses	173,688
Towamencin Township	Intermodal Bus Transportation Center	1,488,750
Washington County	Intermodal Facilities	625,275
Westmoreland County	Intermodal Facility	198,500
Wilkes-Barre	Intermodal Facility	1,240,625
Williamsport	Bus Facility	1,191,000
PUERTO RICO		
San Juan	Intermodal Access	942,875
RHODE ISLAND		
Providence	Buses and bus maintenance facility	2,233,125
Rhode Island Public Transit Authority	Buses	3,176,000
SOUTH CAROLINA		
Columbia	Bus replacement	1,091,750
Pee Dee	Buses and facilities	1,240,625
South Carolina statewide	Virtual Transit Enterprise	1,210,850
Spartanburg	Buses and facilities	992,500
SOUTH DAKOTA		
	Computerized bus dispatch system, radios, money boxes, and lift repl.	794,000
Sioux Falls	Buses	992,500
South Dakota	Bus facilities and buses	3,473,750
TENNESSEE		
Statewide	Buses and bus facilities	992,500
Chattanooga	Alternatively fueled buses	992,500
TEXAS		
Austin	Buses	2,233,125
Brazos Transit Authority	Buses and facilities	1,488,750
Corpus Christi Transit Authority	Buses and facilities	992,500
Dallas Area Rapid Transit	Buses	2,729,375
Fort Worth	Bus and paratransit vehicle project	2,481,250
Galveston	Buses and facilities	992,500
Texas statewide	Small urban and rural buses	5,955,000
UTAH		
Ogden	Intermodal Center	794,000
	Utah Hybrid electric vehicle bus purchase	1,488,750
Utah Transit Authority	Intermodal Facilities	1,488,750
Utah Transit Authority/Park City Transit	Buses	6,451,250
VIRGINIA		
Alexandria	Bus maintenance facility and Crystal City canopy project	992,500
Alexandria	King Street Station access	1,091,750
Harrisonburg	Buses	198,500
Lynchburg	Buses	198,500
Richmond	GRTC bus maintenance facility	1,240,625
Roanoke	Buses	198,500
Statewide	Buses and bus facilities	4,014,663
Falls Church	Electric bus and bus facilities	397,000

TABLE 9

FEDERAL TRANSIT ADMINISTRATION

FY 1999 SECTION 5309 BUS ALLOCATIONS

STATE/AREA	PROJECT	FY 1999 ALLOCATIONS
VIRGINIA Statewide (cont'd)		
Franconia-Springfield	Bus and bus facilities	$645,125
Manassas Transit Depot	Park and ride lot expansion	277,900
Potomac and Rappahannock Transportation Commission	Fleet replacement	1,588,000
Richmond	Main Street Station	1,985,000
Stringfellow Road/Interstate 66	Park and ride lot improvements	992,500
Warrenton Circuit Rider		24,813
VERMONT		
Brattleboro	Union Station multimodal center	2,481,250
Burlington	Multimodal center	992,500
Deerfield Valley Transit authority		496,250
WASHINGTON		
Anacortes	Ferry terminal information system	496,250
	Ben Franklin transit operating facility	992,500
Bremerton	Transportation center	992,500
Central Puget Sound Seattle	Bus program	7,940,000
Chelan-Douglas	Multimodal center	893,250
Everett	Multimodal Transportation Center	1,935,375
Grant County	Buses and vans	595,500
Mount Vernon	Multimodal Center	1,736,875
Port Angeles center	Port Angeles center	992,500
Seattle	Intermodal Transportation Terminal	1,240,625
Snohomish County	Community transit buses	992,500
Tacoma Dome	Buses and bus facilities	1,736,875
Thurston County	Intercity buses	992,500
Vancouver Clark County (C-Tran)	Bus facilities	992,500
WISCONSIN		
Milwaukee County	Buses	3,970,000
Wisconsin statewide	Bus facilities and buses	3,970,000
Appleton, Green Bay, Shawano, Menominee Tribe and Oneida Tribe	Bus facilities and buses	2,059,438
LaCrosse, Onalaska, Prairie Du Chien, Rice Lake, Viroqua and Ho Chuck Nation	Bus facilities and buses	992,500
Ashland, Chippewa Falls, Eau Claire, Ladysmith, Marshfield, Rhinelander, Rusk County	Bus facilities and buses	297,750
Milwaukee	Intermodal facility rehabilitation	992,500
Milwaukee County		3,970,000
Waukesha	Transit center	496,250
WEST VIRGINIA		
Huntington	Intermodal Facility	7,940,000
West Virginia statewide	Intermodal Facility and buses	6,451,250
TOTAL		$497,639,500

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR SECTION 5309 BUS UNOBLIGATED ALLOCATIONS

STATE/AREA	PRIOR YEAR UNOBLIGATED ALLOCATION
FY 1998:	
AL Birmingham/Jefferson County	$2,931,588
AL Birmingham	5,863,178
AL Gadsden	97,730
AL Huntsville	4,885,981
AL Mobile	977,196
AL Mobile	977,196
AL Mobile	1,465,794
AL Mobile	5,374,579
AL Tuscaloosa	977,196
AZ Phoenix	4,397,383
AZ Tuscon	977,196
CA Folsom	1,465,794
CA Foothill	8,794,766
CA I-5 Consortium Cities Joint Powers Authority	4,885,981
CA Inglewood	488,598
CA Lake Tahoe	977,196
CA Long Beach	1,465,794
CA Marina/Ft. Ord	977,196
CA Mendocino County	781,757
CA Modesto	1,710,093
CA Rialto	1,074,916
CA Riverside County	2,296,411
CA Riverside County	977,196
CA Sacramento	977,196
CA San Joaquin (Stockton)	1,954,393
CA Santa Clara	2,442,991
CA Santa Cruz Metropolitan Transit District	977,196
CA Solano County	1,172,636
CA Sonoma County	977,196

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR SECTION 5309 BUS UNOBLIGATED ALLOCATIONS

STATE/AREA	PRIOR YEAR UNOBLIGATED ALLOCATION
FY 1998 (cont'd):	
CA Unitrans	$412,166
CA Woodland	195,439
CA Yolo County	977,196
CA Yosemite area	206,083
CO Statewide	98,353
CT Bridgeport	1,954,393
CT Bridgeport	3,664,486
CT New Haven	1,172,636
DE Statewide	1,465,794
FL Daytona Beach	1,954,393
FL Florida Citrus Connection	1,465,794
FL Lakeland	977,196
FL Lakeworth	977,196
FL Metro-Dade County	4,885,981
FL Palm Beach County	966,753
FL Tampa (Hillsborough County)	1,465,794
GA Chatham	3,908,785
GA MARTA	2,060,830
HI Honolulu	4,885,981
IL Statewide	2,049,152
IN Indianapolis	1,954,393
IN South Bend	1,954,393
IA Statewide	1,133,457
IA Sioux City	1,221,495
KS Statewide	977,196
LA Baton Rouge	586,318
LA Lafayette	732,897
LA Lake Charles	146,579
LA Monroe	781,757
LA New Orleans	8,794,766

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR SECTION 5309 BUS UNOBLIGATED ALLOCATIONS

STATE/AREA	PRIOR YEAR UNOBLIGATED ALLOCATION
FY 1998 (cont'd):	
LA Shreveport	$390,879
LA St. Tammany Parish	293,159
MD Statewide	7,817,570
MA South Station	977,196
MI Statewide	7,328,971
MN Metropolitan Council transit Operations	8,794,766
MN St. Paul	1,465,794
MS Jackson	1,954,393
NV Clark County	7,817,570
NV Reno, Washoe County RTC	1,465,794
NJ Statewide	5,863,178
NM Albuquerque	977,196
NM Las Cruces, Santa Fe and Albuquerque	977,196
NM Statewide	3,664,486
NY New Rochelle	1,465,794
NY New York City	7,328,971
NY NFTA	977,196
NY Poughkeepsie	1,954,393
NY Staten Island/Brooklyn	977,196
NY Suffolk County	2,100,972
NY Syracuse	4,201,944
NY Westchester County	4,885,981
NY Yonkers	1,954,393
NC Chapel Hill University of North Carolina	977,196
NC Statewide	3,340,000
OR Eugene-Springfield-Land County	977,196
OR Lane Transit District	977,196
OR Salem and Corvallis	977,196
PA Fayette and Somerset	586,318
PA Indiana County	488,598

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR SECTION 5309 BUS UNOBLIGATED ALLOCATIONS

STATE/AREA	PRIOR YEAR UNOBLIGATED ALLOCATION
FY 1998 (cont'd):	
PA Lackawanna County	$293,159
PA Lawrence County	977,196
PA Lehigh and Northampton	977,196
PA New Castle area transit authority	732,897
PA Schuykill County	195,439
PA Scranton	1,465,794
PA SEPTA	7,328,972
PA Towanda Borough	1,954,393
PA Wilkes-Barre	1,465,794
PA Statewide	1,221,496
SC Columbia	1,954,393
SC Pee Dee Regional Planning Authority	2,038,060
SC Virtual Transit Enterprise	977,196
SD Statewide	2,198,692
TN Statewide	5,617,570
TX Austin	2,931,588
TX Brazos Transit Authority	2,931,588
TX Corpus Christi	1,905,533
TX El Paso	977,196
TX Galveston	1,954,393
TX Rural Texas	2,442,991
UT Utah Transit Authority Olympic	1,954,393
UT Park City Transit	390,879
UT Utah Transit Authority	824,332
UT Utah Transit Authority Olympic	2,442,991
UT Statewide	1,728,382
VT Burlington	1,465,794
VT Statewide	977,196
VA Clarendon canopy project	244,299
VA Dulles corridor	2,442,991

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR SECTION 5309 BUS UNOBLIGATED ALLOCATIONS

STATE/AREA	PRIOR YEAR UNOBLIGATED ALLOCATION
FY 1998 (cont'd):	
VA Richmond	$2,442,991
WA Bremerton	412,166
WA Chelan- Douglas	977,196
WA Community Transit	1,465,794
WA Everett	2,442,991
WA King County	977,196
WA King County	1,465,794
WA King County	4,885,981
WA Olympic Peninsula International Gateway	977,196
WA Snohomish County	2,442,991
WA Tacoma Dome station project	618,249
WV Huntington	6,840,374
WV Statewide	9,039,066
WI Milwaukee	977,196
WI Wisconsin Transit System	1,434,458
Fuel Cell powered transit bus program	4,850,000
Bus testing facility	3,000,000
TOTAL FY 1998 Allocations	$301,571,105
FY 1997:	
AR Little Rock	$992,500
CA Fairfield City	1,389,500
CA Foothill	4,053,837
CA North Orange County	198,500
CA Norwalk	192,500
CA Riverside County	992,500
CA San Joaquin	2,729,375
CA Santa Cruz (MTD)	1,985,000
CA Sonoma County	992,500

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR SECTION 5309 BUS UNOBLIGATED ALLOCATIONS

STATE/AREA	PRIOR YEAR UNOBLIGATED ALLOCATION
FY 1997 (cont'd):	
CA Thousand Oaks	$595,500
DE Statewide	5,195,478
FL Miami Beach	992,500
GA Chatham	1,052,050
IA Sioux City	2,143,800
IN South Bend	5,455,322
KS Statewide	622,500
KS Johnson City	2,090,314
LA Statewide	9,794,315
MA Boston	672,500
MA Lowell	992,500
MI Statewide	4,122,500
MS Jackson	992,500
MS Jackson	3,473,750
MO St. Louis	1,736,875
NY Buffalo	992,500
NY New Rochelle	1,235,000
NY Syracuse	1,985,000
OR Hood River	173,688
OR Salem	1,836,125
PA Erie	1,985,000
PA Indiana County	674,900
SC Spartanburg	1,488,750
TX El Paso	139,988
TX Galveston	496,250
TX Liberty, Montgomery, Polk Counties	1,013,170
UT Salt Lake City	5,458,750
VT Statewide	188,125
VT Burlington	1,488,750
VT Urban & Rural	169,375

TABLE 9A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR SECTION 5309 BUS UNOBLIGATED ALLOCATIONS

STATE/AREA	PRIOR YEAR UNOBLIGATED ALLOCATION
FY 1997 (cont'd):	
VA Reston	$496,250
VA Virginia Beach	992,500
WA Everett	2,977,500
WA Port Angeles	992,500
TOTAL FY 1997 Allocations	$78,242,737
TOTAL (All Allocations Above)	$379,813,842

TABLE 10

FEDERAL TRANSIT ADMINISTRATION

TEA-21 AUTHORIZATION LEVELS (GUARANTEED FUNDING ONLY)

APPROPRIATION / PROGRAM	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	28-Oct-98 Total
Urbanized Area Formula (Section 5307)	2,298,852,727	2,548,190,791	2,772,890,281	2,997,316,081	3,220,601,506	3,445,939,606	17,283,790,992
Nonurbanized Area Formula (Section 5311)	134,077,934	177,923,658	193,612,968	209,283,168	224,873,743	240,607,643	1,180,379,114
Elderly and Persons with Disabilities (Section 5310)	62,219,389	67,035,601	72,946,801	78,850,801	84,724,801	90,652,801	456,430,195
Clean Fuels Formula Program (Section 5308)	0	50,000,000	50,000,000	50,000,000	50,000,000	50,000,000	250,000,000
Over the Road Bus Accessibility Program (new)	0	2,000,000	3,700,000	4,700,000	6,950,000	6,950,000	24,300,000
Alaska Railroad (Section 5307)	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	29,099,700
Bus and Bus Related (Section 5309)	400,000,000	451,400,000	490,200,000	529,200,000	568,200,000	607,200,000	3,046,200,000
Fixed Guideway Modernization (Section 5309)	800,000,000	902,800,000	980,400,000	1,058,400,000	1,136,400,000	1,214,400,000	6,092,400,000
New Starts (Section 5309)	800,000,000	902,800,000	980,400,000	1,058,400,000	1,136,400,000	1,214,400,000	6,092,400,000
Job Access and Reverse Commute Program (new)	0	50,000,000	75,000,000	100,000,000	125,000,000	150,000,000	500,000,000
Metropolitan Planning (Section 5303)	39,500,000	43,841,600	49,632,000	52,113,600	55,422,400	60,385,600	300,895,200
State Planning & Research (Section 5313(b))	8,250,000	9,158,400	10,368,000	10,886,400	11,577,600	12,614,400	62,854,800
National Planning & Research (Section 5314)	32,750,000	27,500,000	29,500,000	29,500,000	31,500,000	31,500,000	182,250,000
Rural Transit Assistance (Section 5311(b)(2))	4,500,000	5,250,000	5,250,000	5,250,000	5,250,000	5,250,000	30,750,000
Transit Cooperative Research (Section 5313(a))	4,000,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	45,250,000
National Transit Institute (Section 5315)	3,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	23,000,000
University Transportation Centers (Section 5317(b))	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	36,000,000
Administrative Expenses	45,738,000	54,000,000	60,000,000	64,000,000	67,000,000	73,000,000	363,738,000
FEDERAL TRANSIT ADMINISTRATION TOTAL:	4,643,738,000	5,315,000,000	5,797,000,000	6,271,000,000	6,747,000,000	7,226,000,000	35,999,738,001

Fiscal Years 1999-2003 funding for the Clean Fuels Formula Program, established under TEA-21, equals $100,000,000. $50,000,000 is shown under the Clean Fuels Formula Program (Section 5308); and $50,000,000 is included under the Bus and Bus Related (Section 5309).

Table 10 of Fed Reg

TABLE 10A

FEDERAL TRANSIT ADMINISTRATION

TEA-21 AUTHORIZATION LEVELS (GUARANTEED AND NONGUARANTEED FUNDING)

APPROPRIATION / PROGRAM	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	28-Oct-98 Total
Urbanized Area Formula (Section 5307)	2,298,852,727	2,698,190,791	2,922,890,281	3,147,316,081	3,370,601,506	3,595,939,606	18,033,790,992
Nonurbanized Area Formula (Section 5311)	134,077,934	177,923,658	193,612,968	209,283,168	224,873,743	240,607,643	1,180,379,114
Elderly and Persons with Disabilities (Section 5310)	62,219,389	67,035,601	72,946,801	78,850,801	84,724,801	90,652,801	456,430,194
Clean Fuels Formula Program (Section 5308)	0	150,000,000	150,000,000	150,000,000	150,000,000	150,000,000	750,000,000
Over the Road Bus Accessibility Program (new)	0	2,000,000	3,700,000	4,700,000	6,950,000	6,950,000	24,300,000
Alaska Railroad (Section 5307)	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	4,849,950	29,099,700
Bus and Bus Related (Section 5309)	400,000,000	551,400,000	590,200,000	629,200,000	668,200,000	707,200,000	3,546,200,000
Fixed Guideway Modernization (Section 5309)	800,000,000	1,002,800,000	1,080,400,000	1,158,400,000	1,236,400,000	1,314,400,000	6,592,400,000
New Starts (Section 5309)	800,000,000	1,302,800,000	1,390,400,000	1,478,400,000	1,566,400,000	1,644,400,000	8,182,400,000
Job Access and Reverse Commute Program (new)	0	150,000,000	150,000,000	150,000,000	150,000,000	150,000,000	750,000,000
Metropolitan Planning (Section 5303)	39,500,000	70,312,000	76,929,600	80,238,400	84,374,400	90,164,800	441,519,200
State Planning & Research (Section 5313(b))	8,250,000	14,688,000	16,070,400	16,761,600	17,625,600	18,835,200	92,230,800
National Planning & Research (Section 5314)	32,750,000	58,500,000	60,500,000	62,500,000	64,500,000	65,500,000	344,250,000
Rural Transit Assistance (Section 5311(b)(2))	4,500,000	5,250,000	5,250,000	5,250,000	5,250,000	5,250,000	30,750,000
Transit Cooperative Research (Section 5313(a))	4,000,000	8,250,000	8,250,000	8,250,000	8,250,000	8,250,000	45,250,000
National Transit Institute (Section 5315)	3,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	23,000,000
University Transportation Centers (Section 5317(b))	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	36,000,000
Administrative Expenses	45,738,000	67,000,000	74,000,000	80,000,000	84,000,000	91,000,000	441,738,000
FEDERAL TRANSIT ADMINISTRATION TOTAL:	4,643,738,000	6,341,000,000	6,810,000,000	7,274,000,000	7,737,000,000	8,194,000,000	40,999,738,000

Table 10A of Fed Reg

TABLE 11

FEDERAL TRANSIT ADMINISTRATION - Fiscal Years 1999-2003
Apportionment Formula for Section 5307 Urbanized Area Formula Program

Percent of Formula Funds Available--

Section 5310: 2.4% States (Allocated to states based on state's population of elderly and persons with disabilities)

Section 5311: 6.37% Nonurbanized Areas (Allocated to states based on each state's nonurbanized area population)

Section 5307: 91.23% Urbanized Areas

(UZA) Population - Weighting Factors

50,000-199,000 9.32%
(Apportioned to Governors)
- 50% - population
- 50% - population x density
  [density = inhabitants / square mile]

>200,000 90.68%
(Apportioned to UZAs)
- 33.29% ("Fixed Guideway" Tier*)
  - 95.61% [at least 0.75% of these funds for each UZA with commuter rail & pop. > 750,000]
    - 60% - fixed guideway revenue vehicle miles
    - 40% - fixed guideway route miles
  - 4.39% ("Incentive" Portion of Tier)
    [at least 0.75% of these funds for each UZA with commuter rail & pop. > 750,000]
    -- fixed guideway passenger miles x fixed guideway passenger miles/operating cost
- 66.71% ("Bus" Tier)
  - 90.8%
    - 73.39% for UZAs with pop. >1,000,000
      - 50% - bus revenue vehicle miles
      - 25% - population
      - 25% - population x density
    - 26.61% for UZAs pop. < 1,000,000
      - 50% - bus revenue vehicle miles
      - 25% - population
      - 25% - population x density
  - 9.2% ("Incentive" Portion of Tier)
    -- bus passenger miles x bus passenger miles / operating cost

*Includes all fixed guideway modes, such as heavy rail, commuter rail, light rail, trolleybus, aerial tramway, inclined plane, cable car, automated guideway transit, ferryboats, exclusive busways, and HOV lanes.

99FR-T11/4

TABLE 12

FEDERAL TRANSIT ADMINISTRATION - Fiscal Years 1998-2003
Apportionment Formula for Section 5309 Fixed Guideway Modernization Program

Tier 1 — First $497,700,000 to the following areas:

Baltimore	$ 8,372,000
Boston	38,948,000
Chicago/N.W. Indiana	78,169,000
Cleveland	9,509,500
New Orleans	1,730,588
New York	176,034,461
N. E. New Jersey	50,604,653
Philadelphia/So. New Jersey	58,924,764
Pittsburgh	13,662,463
San Francisco	33,989,571
SW Connecticut	27,755,000

Tier 2 — Next $70,000,000 as follows: Tier 2(A): 50 percent is allocated to areas identified in Tier 1 and Tier 2(B): 50 percent to other urbanized areas with fixed guideway tiers in operation at least seven years. Funds are allocated by the Urbanized Area Formula Program fixed guideway tier formula factors that were used to apportion funds for the fixed guideway modernization program in FY 1997.

Tier 3 — Next $5,700,000 as follows: Pittsburgh 61.76%; Cleveland 10.73%; New Orleans 5.79% and 21.72% is allocated to all other areas in Tier 2(B) by the same fixed guideway tier formula factors used in fiscal year 1997.

Tier 4 — Next $186,600,000 as follows: All eligible areas using the same year fixed guideway tier formula factors used in fiscal year 1997.

Tier 5 — Next $70,000,000 as follows: 65% to the 11 areas identified in Tier 1, and 35% to all other areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment that is less than 7 years old in the year of the apportionment will be deleted from the data base.

Tier 6 — Next $50,000,000 as follows: 60% to the 11 areas identified in Tier 1, and 40% to all other areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment that is less than 7 years old in the year of the apportionment will be deleted from the data base.

Tier 7 — Remaining amounts as follows: 50% to the 11 areas identified in Tier 1, and 50% to all other areas using the most current Urbanized Area Formula Program fixed guideway formula factors. Any segment that is less than 7 years old in the year of the apportionment will be deleted from the data base.

99FR-T12/4

TABLE 13

FEDERAL TRANSIT ADMINISTRATION - Unit Values of Data
Fiscal Year 1999 Formula Grant Apportionments

	FY 1999 APPORTIONMENTS
Section 5307 Urbanized Area Formula Program - Bus Tier	
Urbanized Areas Over 1,000,000:	
Population	$2.68830106
Population x Density	$0.00068950
Bus Revenue Vehicle Mile	$0.37046436
Urbanized Areas Under 1,000,000:	
Population	$2.42947985
Population x Density	$0.00106993
Bus Revenue Vehicle Mile	$0.45538015
Bus Incentive (PM denotes Passenger Mile):	
Bus PM x Bus PM = Operating Cost	$0.00445117
Section 5307 Urbanized Area Formula Program - Fixed Guideway Tier	
Fixed Guideway Revenue Vehicle Mile	$0.49724989
Fixed Guideway Route Mile	$28,266
- Commuter Rail Floor $5,499,333	
Fixed Guideway Incentive:	
Fixed Guideway PM x Fixed Guideway PM = Operating Cost	$0.00043044
- Commuter Rail Incentive Floor $252,506	
Section 5307 Urbanized Area Formula Program - Areas Under 200,000	
Population	$3.96867133
Population x Density	$0.00198314
Section 5311 Nonurbanized Area Formula Program	
Areas Under 50,000	
Population	$1.93056023

Section 5309 Capital Program - Fixed Guideway Modernization

	Tier 2	Tier 3	Tier 4	Tier 5	Tier 6	Tier 7
Legislatively Specified Areas:			All Areas:			
Revenue Vehicle Mile	$0.03043443		$1.13683131	$0.03919213	$0.02584096	$0.00690341
Route Mile	$2,122.43		$7,832.52	$2,811.77	$1,853.91	$495.27
Other Areas:						
Revenue Vehicle Mile	$0.16377360	$0.00579309		$0.14876666	$0.12144217	$0.04866491
Route Mile	$4,772.78	$168.83		$5,666.71	$4,625.88	$1,853.71

98FR-T13/4

[FR Doc. 98–29683 Filed 11–5–98; 8:45 am]
BILLING CODE 4910–57–C

Friday
November 6, 1998

Part III

Department of Transportation

Federal Transit Administration

Fiscal Year 1999 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 1999 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: This Notice contains FTA's comprehensive compilation of the Federal Fiscal Year 1999 certifications and assurances to be used in connection with all Federal assistance programs administered by FTA during Federal Fiscal Year 1999. (See Appendix A.) These certifications and assurances include all annual certifications required by 49 U.S.C. 5307(d)(1) for FTA's Urbanized Area Formula Program as well as other certifications and assurances needed for compliance with various other Federal statutes and regulations affecting FTA's assistance programs.

EFFECTIVE DATE: November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Pat Berkley, Office of Program Management, Federal Transit Administration, (202) 366–6470; the FTA Web Site at http://www.fta.dot.gov; or contact FTA staff in the appropriate Regional Office listed below. For copies of other related documents, contact the Office of Public Affairs, Federal Transit Administration (202) 366–4019.

Region 1: Boston

States served: Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and Massachusetts, Telephone #617–494–2055

Region 2: New York

States served: New York, New Jersey, and Virgin Islands, Telephone #212–264–8162

Region 3: Philadelphia

States served: Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia, Telephone #215–656–7100

Region 4: Atlanta

States served: Kentucky, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and Puerto Rico, Telephone #404–562–3500

Region 5: Chicago

States served: Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio, Telephone #312–353–2789

Region 6: Dallas/Ft.Worth

States served: Arkansas, Louisiana, Oklahoma, Texas, and New Mexico, Telephone #817–860–9663

Region 7: Kansas City

States served: Missouri, Iowa, Kansas, and Nebraska, Telephone #816–523–0204

Region 8: Denver

States served: Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota, Telephone #303–844–3242

Region 9: San Francisco

States served: California, Hawaii, Guam, Arizona, Nevada, American Samoa, and the Northern Mariana Islands, Telephone #415–744–3133

Region 10: Seattle

States served: Idaho, Oregon, Washington, and Alaska, Telephone #206–220–7954

SUPPLEMENTARY INFORMATION: Before FTA may award a Federal grant or cooperative agreement, the applicant must provide to FTA all certifications and assurances required by Federal laws and regulations for the applicant or its project.

This Notice provides the text of certifications and assurances that may be required by Federal law, regulations, or directives for the various Federal assistance programs administered by FTA including the Capital Program, the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, the Metropolitan Planning Program, the Rural Transit Assistance Program, the Elderly and Persons With Disabilities Program, the Human Resource Program, the National Training Institute Program, the State Planning and Research Program, the National Planning and Research Program, the *Joint Partnership Program for Deployment of Innovation Program and the International Mass Transportation Program*, all codified at 49 U.S.C. chapter 53. When administering Federal assistance programs authorized by other Federal statutes, such as Title 23, United States Code, FTA uses these same certifications and assurances during Federal Fiscal Year 1999. In addition FTA will also use these certifications in administering the new Job Access and Reverse Commute Program, the Over-the-road Bus Accessibility Program, the State Infrastructure Bank Pilot Program, and the Pilot Program for Intercity Rail Infrastructure authorized by the Transportation Equity Act for the 21st Century (TEA–21).

This Notice provides the applicant with a single Signature Page on which the applicant and its attorney certifies compliance with all certifications and assurances applicable to each grant or cooperative agreement for which the applicant wishes to apply in Federal Fiscal Year 1999. (See Signature Page of Appendix A.)

An applicant's Annual Certifications and Assurances applicable to a specific grant or cooperative agreement generally remain in effect for the life of the grant or cooperative agreement to closeout, or the life of the project or project property when a useful life or standard industry life is in effect. If in a later year, however, the Applicant provides certifications and assurances that differ from the certifications and assurances previously made, the later certifications and assurances will apply to the grant, cooperative agreement, project, or project property, except as FTA otherwise permits.

Electronic Submission

FTA has expanded the use of the electronic programs for applicants, first introduced in 1995. Beginning with Fiscal Year 1999, FTA expects applicants to submit their applications as well as certifications and assurances electronically by means of the FTA electronic grant award and management system. If an applicant is not able to submit the certifications electronically, the applicant should use the Signature Page form in Appendix A of this **Federal Register** Notice. The Signature Page contains the current fiscal year's certifications and, when properly attested to and submitted to FTA, assures FTA that the applicant intends to comply with the requirements for the specific program involved. Applicants may contact the appropriate Regional Office shown above for more information.

1999 Changes

(1) All Applicants for FTA capital program or formula program assistance, and current Grantees with an active project financed with FTA capital program or formula program assistance, will be required to provide the Appendix A Certifications and Assurances within 90 days from the date of this publication or with its first grant application in Fiscal Year 1999, whichever comes first. (2) The attorney signature from previous years on the Single Signature Page will not be acceptable. FTA requires a current attorney's affirmation of the Applicant's legal authority to certify compliance with the funding obligations in this document. Additional changes include

clarification and reference sources. It is important that each applicant be familiar with all fifteen certification and assurance categories contained in this document as they may be a prerequisite for receiving FTA financial assistance. (3) Recipients of funds apportioned under Section 5336 serving a population of 200,000 or more are required by Section 5307(k) to make 1 per cent of their funds available for transit enhancement activities. In addition, those recipients are also required to submit a report annually listing the projects carried out during the preceding fiscal year with those funds. (See Signature Page.) (4) A recipient of funds under sections 5312(d) *Joint Partnership Program for Deployment of Innovation* and 5312(e), *International Mass Transportation Program* will be required to comply with the requirements of the 1999 Annual Certifications and Assurances. (5) A recipient of funds under the Transportation Equity Act for the 21st Century programs under section 3021, *Pilot Program for Intercity Rail Infrastructure* (only Oklahoma); *Job Access and Reverse Commute Grant Program (section 3037);* and *Over-the-road Bus Accessibility Program (3038)* will be required to comply with the requirements of the 1999 Annual Certification Program.

FTA directs your attention to Appendix C in FTA Circular 9300.1A, ''Capital Program Grant Application Instructions,'' which was published on October 1, 1998; to Exhibit D in FTA Circular 9040.1E, dated October 1, 1998, ''Nonurbanized Area Formula Program Guidance and Grant Application Instructions; and Appendix G of FTA Circular 9030.1C, dated October 1, 1998, Urbanized Area Formula Program: Grant Application Instructions. These circulars contain a previous version of the Annual Certifications and Assurances which includes some but not all of the most current and valid changes. Do not use the document contained in these circulars. They are examples only and will not be considered acceptable or valid. Therefore the provisions of this Notice supersede conflicting statements in those circulars. Note especially that the Applicant must use the most current Signature Pages shown in this Federal Fiscal Year *1999* **Federal Register** document or provide the signature concurrently through the transportation electronic award and management system for all applicants. A copy of an earlier fiscal year's Certification Signature page is not acceptable.

Background

With the publication of the Federal Fiscal Year 1995 version of this Notice, certifications and assurances for Federal assistance programs administered by FTA were for the first time consolidated into one document. This marked the beginning of an effort to assist applicants in reducing time and paper work in certifying compliance with various Federal laws and regulations. It coincided with the on-line program and the electronic initiative described above, which also reduced the time and paper required to process an application.

FTA intends to continue publishing this document annually with any changes or additions specifically highlighted, in conjunction with its publication of the FTA annual apportionment Notice, which allocates funds in accordance with the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act.

Procedures

Following is a detailed compilation of Certifications and Assurances and the Signature Page (Appendix A). The Signature Page is to be signed by the applicant's authorized representative and its attorney. It is to be electronically transmitted through the FTA computerized on-line system, to the appropriate FTA Regional office within 90 days of this **Federal Register** publication date or with the applicant's first Federal assistance application in Federal Fiscal Year 1999, whichever comes first.

All applicants are advised to read the entire 1999 Certifications and Assurances to be confident of their responsibilities and commitments. The applicant may signify compliance with all Categories by placing a single ''X'' in the appropriate space at the top of the Signature Selection Page in Appendix A. However, the applicant's Attorney Affirmation continues to be required as indicated on the Signature Page at the end of Appendix A, regardless of the applicant's selection of a single selection for all fifteen Categories, or individual options selected from the fifteen Categories.

The Signature Page, when electronically transmitted to FTA or properly signed and submitted, assures FTA that the applicant intends to comply with the requirements for the specific program(s) involved, should they apply for an FTA grant during this fiscal year. All applicants must read the selection portion and the signature portion of this document and signify compliance by marking, where appropriate, with an ''X'' on the category selection side, and then signifying compliance as indicated. (See Appendix A.) An applicant participating in the electronic award and management program, described above, may submit its Signature Page (both the selection side and the signature side) electronically. The applicant should not hesitate to consult with the appropriate Regional Office or Headquarters Office before submitting its certifications and assurances.

References

The Transportation Equity Act for the 21st Century, Pub. L. 105–178, June 9, 1998, as amended by the TEA–21 Restoration Act 105–206, 112 Stat. 685, July 22, 1998, 49 U.S.C. chapter 53, Title 23 U.S.C., U.S. DOT and FTA regulations under 49 CFR, and FTA Circulars.

Issued on: October 29, 1998.

Gordon J. Linton,

Administrator.

Appendix A

Federal Fiscal Year 1999 Certifications and Assurances for Federal Transit Administration Assistance Programs

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for the various Federal Transit Administration (FTA) programs. FTA requests each Applicant provide as many of the following certifications and assurances as needed to cover the various types of programs for which the Applicant intends to seek FTA assistance in Federal Fiscal Year 1999. A state providing certifications and assurances on behalf of its prospective subrecipients is expected to obtain sufficient documentation from those subrecipients needed to provide informed certifications and assurances. The fifteen categories of certifications and assurances are listed by Roman numerals I through XV on the other side of the Signature Page of this document. Categories II through XV will apply to some, but not all, applicants. The designation of the categories corresponds to the circumstances mandating submission of specific certifications, assurances, or agreements.

I. Certifications and Assurances Required of Each Applicant

Each Applicant for Federal assistance awarded by FTA *must* provide all certifications and assurances in this Category I. Accordingly, FTA may not award any Federal assistance until the Applicant provides assurance of compliance by selecting Category I on the Signature Page at the end of this document.

A. Authority of Applicant and Its Representative

The authorized representative of the Applicant and legal counsel who sign these certifications, assurances, and agreements attest that both the Applicant and its authorized representative have adequate authority under state and local law and the

by-laws or internal rules of the Applicant organization to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant,

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant, and

(3) Execute grant and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by an FTA grant or cooperative agreement. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant or cooperative agreement issued for its project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

C. Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

As required by U.S. DOT regulations on Governmentwide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:

(1) The Applicant (Primary Participant) certifies, to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not, within a three-year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, state, or local) terminated for cause or default.

(2) The Applicant also certifies that, if it later becomes aware of any information contradicting the statements of paragraph (1) above, it will promptly provide that information to FTA.

(3) If the Applicant (Primary Participant) is unable to certify to the statements in paragraphs (1) and (2) above, it shall indicate so on its Signature Page and provide a written explanation to FTA.

D. Drug-Free Workplace Agreement

As required by U.S. DOT regulations, ''Drug-Free Workplace Requirements (Grants),'' 49 CFR Part 29, Subpart F, as modified by 41 U.S.C. 702, the Applicant agrees that it will provide a drug-free workplace by:

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace and specifying the actions that will be taken against its employees for violation of that prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employees about:

(a) The dangers of drug abuse in the workplace,

(b) Its policy of maintaining a drug-free workplace,

(c) Any available drug counseling, rehabilitation, and employee assistance programs, and

(d) The penalties that may be imposed upon its employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each of its employees to be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (1);

(4) Notifying each of its employees in the statement required by paragraph (1) that, as a condition of employment financed with Federal assistance provided by the grant or cooperative agreement, the employee will be required to:

(a) Abide by the terms of the statement, and

(b) Notify the employer (Applicant) in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than 5 calendar days after that conviction;

(5) Notifying FTA in writing, within 10 calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction. The Applicant, as employer of any convicted employee, must provide notice, including position title, to every project officer or other designee on whose project activity the convicted employee was working. Notice shall include the identification number(s) of each affected grant or cooperative agreement.

(6) Taking one of the following actions within 30 calendar days of receiving notice under paragraph (4)(b) above with respect to any employee who is so convicted:

(a) Taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or

(b) Requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency;

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) above.

The Applicant agrees to maintain a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted, and make that list readily accessible to FTA.

E. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance submitted to FTA has been or will be submitted, as required by each state, for intergovernmental review to the appropriate state and local agencies. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, ''Intergovernmental Review of Department of Transportation Programs and Activities,'' 49 CFR part 17.

F. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, ''Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,'' 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, ''Title VI Program Guidelines for Federal Transit Administration Recipients'', and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

(1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.

(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.

(4) The Applicant assures that it will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.

(5) As required by 49 CFR 21.7(a)(2), the Applicant will include in each third party contract or subagreement appropriate provisions to impose the requirements of 49 U.S.C. 5332 and 49 CFR part 21, and include appropriate provisions imposing those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

G. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, ''Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,'' at 49 CFR part 27, implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.* at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

H. Procurement Compliance

The Applicant certifies that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and other implementing requirements FTA may issue. The Applicant certifies that it will include in its contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each subrecipient and each contractor will also include in its subagreements and contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

I. Certifications Prescribed by the Office of Management and Budget (SF–424B and SF–424D)

The Applicant certifies that it:

(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in its application.

(2) Will give FTA, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval.

(5) Will comply with all statutes relating to nondiscrimination including, but not limited to:

(a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681, 1683, and 1685 through 1687, which prohibits discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibit discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972, Pub. L. 92–255, March 21, 1972, and amendments thereto, relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, Pub. L. 91–616, Dec. 31, 1970, and amendments thereto, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd–3 and 290ee–3, related to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing;

(i) Any other nondiscrimination provisions in the specific statutes under which Federal assistance for the project may be provided including, but not limited to section 1101(b) of the Transportation Equity Act for the 21st Century, 23 U.S.C. 101 note, which provides for participation of disadvantaged business enterprises in FTA programs; and

(j) The requirements of any other nondiscrimination statute(s) that may apply to the project.

(6) Will comply, or has complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. As required by U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' at 49 CFR 24.4, and sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, the Applicant assures that it has the requisite authority under applicable state and local law and will comply or has complied with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR part 24 including, but not limited to the following:

(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Applicant will provide fair and reasonable relocation payments and assistance required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations or associations displaced as a result of any project financed with FTA assistance;

(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, understanding that FTA will participate in the Applicant's costs of providing those payments and that assistance for the project as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA

involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions.

(7) Will comply, as applicable, with provisions of the Hatch Act, 5 U.S.C. 1501 through 1508, and 7324 through 7326, which limit the political activities of state and local agencies and their officers and employees whose principal employment activities are financed in whole or part with Federal funds including a Federal loan, grant, or cooperative agreement, but does not apply to a nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act does not otherwise apply.

(8) To the extent applicable will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 276a through 276a(7), the Copeland Act, as amended, 18 U.S.C. 874 and 40 U.S.C. 276c, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 through 333, regarding labor standards for federally-assisted subagreements.

(9) To the extent applicable, will comply with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

(10) Will comply with environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.* and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 *et seq.*;

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300h *et seq.*;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*; and

(i) Environmental protections for Federal transit programs, including, but not limited to protections for a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance or any land from a historic site of national, state, or local significance used in a transit project as required by 49 U.S.C. 303.

(11) Will comply with the Wild and Scenic Rivers Act of 1968, as amended, 15 U.S.C. 1271 *et seq.* relating to protecting components of the national wild and scenic rivers systems.

(12) Will assist FTA in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note, and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469a–1 *et seq.*

(13) Will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801, which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

(14) Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with FTA directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.

(15) Will comply with FTA requirements concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, ''Seismic Safety,'' 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41.

(16) Will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by FTA or the State.

(17) Will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, regarding the protection of human subjects involved in research, development, and related activities supported by the FTA assistance.

(18) Will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 *et seq.* pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by FTA assistance.

(19) Will have performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.* and OMB Circular No. A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(20) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the project.

II. Lobbying Certification for an Application Exceeding $100,000

An Applicant that submits, or intends to submit this fiscal year, an application for Federal assistance exceeding $100,000 must provide the following certification. FTA may not provide Federal assistance for an application exceeding $100,000 until the Applicant provides this certification by selecting Category II on the Signature Page.

A. As required by U.S. DOT regulations, ''New Restrictions on Lobbying,'' at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress pertaining to the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application to FTA for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' including the information required by the form's instructions, which may be amended to omit such information as permitted by 31 U.S.C. 1352.

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

III. Effects on Private Mass Transportation Companies

An Applicant that is a state or local government seeking Federal assistance under 49 U.S.C. chapter 53 to acquire property or an interest in property of a private mass transportation company or operate mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company must provide the following certification. FTA may not award Federal assistance for that project until the Applicant provides this certification by selecting Category III on the Signature Page.

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that before it acquires

property or an interest in property of a private mass transportation company or operates mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company it has or will have:

A. Found that the assistance is essential to carrying out a program of projects as determined by the plans and programs of the metropolitan planning organization;

B. Provided for the participation of private mass transportation companies to the maximum extent feasible; and

C. Paid or will pay just compensation under state or local law to a private mass transportation company for its franchises or property acquired.

D. The assistance falls within the labor standards compliance requirements of 49 U.S.C. 5333(a) and 5333(b).

IV. Public Hearing Certification for a Capital Project That Will Substantially Affect a Community or its Transit Service

An Applicant seeking Federal assistance under 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or the transit service of a community must provide the following certification. FTA may not award Federal assistance for that project until the Applicant provides this certification by selecting Category IV on the Signature Page.

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, will have:

A. Provided an adequate opportunity for a public hearing with adequate prior notice of the proposed project published in a newspaper of general circulation in the geographic area to be served;

B. Held that hearing and provided FTA a transcript or detailed report summarizing the issues and responses, unless no one with a significant economic, social, or environmental interest requests a hearing;

C. Considered the economic, social, and environmental effects of the project; and

D. Determined that the project is consistent with official plans for developing the urban area.

V. Certification of Pre-Award and Post-Delivery Reviews Required for Acquisition of Rolling Stock

An Applicant seeking FTA assistance to purchase rolling stock must provide the following certification. FTA may not provide assistance for any rolling stock acquisition until the Applicant provides this certification by selecting Category V on the Signature Page.

As required by 49 U.S.C. 5323(m), and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663, in the course of purchasing revenue service rolling stock. Among other things, the Applicant will conduct or cause to be conducted the prescribed pre-award and post-delivery reviews, and will maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

VI. Bus Testing Certification Required for New Bus Acquisitions

An Applicant seeking FTA assistance to acquire new buses must provide the following certification. FTA may not provide assistance for the acquisition of new buses until the Applicant provides this certification by selecting Category VI on the Signature Page.

As required by FTA regulations, ''Bus Testing,'' at 49 CFR 665.7, the Applicant certifies that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or authorizing final acceptance of that bus (as described in 49 CFR part 665):

A. The model of the bus will have been tested at a bus testing facility approved by FTA; and

B. It will have received a copy of the test report prepared on the bus model.

VII. Charter Service Agreement

An Applicant seeking FTA assistance to acquire or operate transportation equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 or Title 23 U.S.C. (except 49 U.S.C. 5310) must enter into the following charter service agreement. FTA may not provide assistance for those projects until the Applicant enters into this agreement by selecting Category VII on the Signature Page.

A. As required by 49 U.S.C. 5323(d) and FTA regulations, ''Charter Service,'' at 49 CFR 604.7, the Applicant agrees that it and its recipients will: (1) provide charter service that uses equipment or facilities acquired with Federal assistance authorized for 49 U.S.C. 5307, 5309, or 5311 or Title 23 U.S.C., only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its recipients desire to provide, unless one or more of the exceptions in 49 CFR 604.9 applies, and (2) comply with the provisions of 49 CFR part 604 before they provide any charter service using equipment or facilities acquired with Federal assistance authorized for the above statutes.

B. The Applicant understands that the requirements of 49 CFR part 604 will apply to any charter service provided, the definitions in 49 CFR part 604 apply to this agreement, and violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

VIII. School Transportation Agreement

An Applicant seeking FTA assistance to acquire or operate transportation facilities and equipment acquired with Federal assistance authorized by 49 U.S.C. chapter 53 must agree as follows. FTA may not provide assistance for transportation facilities until the Applicant enters into this Agreement by selecting Category VIII on the Signature Page.

A. As required by 49 U.S.C. 5323(f) and FTA regulations, ''School Bus Operations,'' at 49 CFR 605.14, the Applicant agrees that it and all its recipients will:

(1) Engage in school transportation operations in competition with private school transportation operators only to the extent permitted by an exception provided by 49 U.S.C. 5323(f), and implementing regulations, and

(2) Comply with the requirements of 49 CFR part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance awarded by FTA and authorized by 49 U.S.C. chapter 53 or Title 23 U.S.C. for transportation projects.

B. The Applicant understands that the requirements of 49 CFR part 605 will apply to any school transportation it provides, the definitions of 49 CFR part 605 apply to this school transportation agreement, and a violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

IX. Certification Required for the Direct Award of FTA Assistance to an Applicant for its Demand Responsive Service

An Applicant seeking direct Federal assistance to support its demand responsive service must provide the following certification. FTA may not award Federal assistance directly to an Applicant to support its demand responsive service until the Applicant provides this certification by selecting Category IX on the Signature Page.

As required by U.S. DOT regulations, ''Transportation Services for Individuals with Disabilities (ADA),'' at 49 CFR 37.77, the Applicant certifies that its demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service offered to persons without disabilities. When viewed in its entirety, the Applicant's service for persons with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

X. Substance Abuse Certifications

If the Applicant is required by Federal regulations to provide the following substance abuse certifications, FTA may not provide Federal assistance to that Applicant until it provides these certifications by selecting Category X on the Signature Page.

A. Alcohol Testing Certification

As required by FTA regulations, ''Prevention of Alcohol Misuse in Transit Operations,'' at 49 CFR 654.83, the Applicant certifies that it has established and implemented an alcohol misuse prevention program complying with the requirements of 49 CFR part 654; and if the Applicant has employees regulated by the Federal Railroad Administration (FRA), the Applicant also certifies that it has for those employees an alcohol misuse prevention program complying with FRA regulations, ''Control of Alcohol and Drug Use,'' 49 CFR part 219.

B. Anti-Drug Program Certification

As required by FTA regulations ''Prevention of Prohibited Drug Use in

Transit Operations,'' at 49 CFR 653.83, the Applicant certifies that it has established and implemented an anti-drug program and has conducted employee training complying with the requirements of 49 CFR part 653; and if the Applicant has employees regulated by the U.S. Federal Railroad Administration (FRA), the Applicant also certifies that it has for those employees an anti-drug program complying with FRA regulations, ''Control of Alcohol and Drug Use,'' 49 CFR part 219.

XI. Certification for a Project Involving Interest or Other Financing Costs

The Applicant must provide the following certification in connection with requests for reimbursements of interest or other financing costs of capital projects. FTA may not provide assistance to support those costs until the Applicant provides this certification by selecting Category XI on the Signature Page.

As required by 49 U.S.C. 5307(g), 49 U.S.C. 5309(g)(2)(B), 49 U.S.C. 5309(g)(3)(A), and 49 U.S.C. 5309(n), the Applicant certifies that it will not seek reimbursement for interest and other financing costs unless its records demonstrate it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA might require.

XII. Certifications for the Urbanized Area Formula Program and the Job Access and Reverse Commute Program

Each Applicant to FTA for Urbanized Area Formula Program assistance authorized for 49 U.S.C. 5307 and each Applicant for Job Access and Reverse Commute Program assistance authorized for Section 3037 of the Transportation Equity Act for the 21st Century, 49 U.S.C. 5309 note, must provide the following certifications in connection with its application. FTA may not award Urbanized Area Formula Program assistance or Job Access and Reverse Commute Program assistance to the Applicant until the Applicant provides these certifications and assurances by selecting Category XIV on the Signature Page.

In addition, each Applicant with a population of 200,000 or more awarded funds apportioned under 49 U.S.C. 5307(k) after June 9, 1998, must submit a report listing the Transit Enhancement projects carried out during Federal fiscal year 1998 with those funds. FTA may not award Urbanized Area Formula Program assistance to any Applicant with a population of 200,000 or more until that Applicant indicates that it has submitted this Report by selecting ''Transit Enhancement Activities Report Submitted'' on the Signature Page under Category XII.

A. Certifications Required by Statute

As required by 49 U.S.C. 5307(d)(1) (A) through (J), the Applicant certifies that:

(1) It has or will have the legal, financial, and technical capacity to carry out the proposed program of projects;

(2) It has or will have satisfactory continuing control over the use of the equipment and facilities;

(3) It will adequately maintain the equipment and facilities;

(4) It will ensure that the elderly and handicapped persons, or any person presenting a Medicare card issued to himself or herself under title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged during non-peak hours for transportation using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307 or Section 3037 of the Transportation Equity Act for the 21st Century (TEA–21), 49 U.S.C. 5309 note, not more than 50 percent of the peak hour fare;

(5) In carrying out a procurement financed with Federal assistance authorized for the Urbanized Area Formula Program at 49 U.S.C. 5307 or Section 3037 of TEA–21, 49 U.S.C. 5309 note, it will use competitive procurement (as defined or approved by the Secretary), it will not use a procurement using exclusionary or discriminatory specifications, and it will comply with applicable Buy America laws in carrying out a procurement;

(6) It has complied or will comply with the requirements of 49 U.S.C. 5307(c); specifically, it has or before submitting its application it will: (a) make available to the public information on amounts available for the Urbanized Area Formula Program at 49 U.S.C. 5307 and, if applicable, the Job Access and Reverse Commute Grant Program, 49 U.S.C. 5309 note, and the program of projects it proposes to undertake with those funds; (b) develop, in consultation with interested parties, including private transportation providers, a proposed program of projects for activities to be financed; (c) publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (d) provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; and (e) ensure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (f) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and (g) make the final program of projects available to the public;

(7) It has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) and applicable FTA policy (specifying Federal and local shares of project costs);

(8) It will comply with: (a) 49 U.S.C. 5301(a) (requirements to develop transportation systems that maximize mobility and minimize fuel consumption and air pollution); (b) 49 U.S.C. 5301(d) (requirements for transportation of the elderly and persons with disabilities); (c) 49 U.S.C. 5303 through 5306 (planning requirements); and (d) 49 U.S.C. 5310 (a) through (d) (programs for the elderly and persons with disabilities);

(9) It has a locally developed process to solicit and consider public comment before raising fares or implementing a major reduction of transportation; and

(10) As required by 49 U.S.C. 5307(d)(1)(J), unless the Applicant has determined that it is not necessary to expend one percent of the amount of Federal assistance it receives for this fiscal year apportioned in accordance with 49 U.S.C. 5336 for transit security projects, it will expend at least one percent of the amount of that assistance for transit security projects, including increased lighting in or adjacent to a transit system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned transit system.

B. Certification Required for Capital Leasing

As required by FTA regulations, ''Capital Leases,'' at 49 CFR 639.15(b)(1) and 639.21, to the extent the Applicant uses Federal assistance authorized for 49 U.S.C. 5307 or Section 3037 of TEA–21, 49 U.S.C. 5309 note, to acquire any capital asset by lease, the Applicant certifies that:

(1) It will not use Federal assistance authorized for 49 U.S.C. 5307 or Section 3037 of TEA–21, 49 U.S.C. 5309 note, to finance the cost of leasing any capital asset until it performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset;

(2) It will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and

(3) It will not enter into a capital lease for which FTA can only provide incremental funding unless it has the financial capacity to meet its future obligations under the lease in the event Federal assistance is not available for capital projects in subsequent years.

C. Certification Required for Sole Source Purchase of Associated Capital Maintenance Item

As required by 49 U.S.C. 5325(c), to the extent that the Applicant procures an associated capital maintenance item under the authority of 49 U.S.C. 5307(b)(1), the Applicant certifies that it will use competition to procure an associated capital maintenance item unless the manufacturer or supplier of that item is the only source for the item and the price of the item is no more than the price similar customers pay for the item, and maintain sufficient records pertaining to each such procurement on file easily retrievable for FTA inspection.

XIII. Certifications and Assurances for the Elderly and Persons with Disabilities Program

An Applicant that intends to administer, on behalf of the state, the Elderly and Persons with Disabilities Program must provide the following certifications and assurances. FTA may not award assistance for the Elderly and Persons with Disabilities Program until the Applicant provides these certifications and

assurances by selecting Category XIII on the Signature Page.

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering on behalf of the state the Elderly and Persons with Disabilities Program authorized by 49 U.S.C. 5310 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5310; and to implement and manage the project.

B. The state assures that each subrecipient either is recognized under state law as a private nonprofit organization with the legal capability to contract with the state to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310.

C. The subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the state concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.

D. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

E. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance awarded for this project.

F. The state assures that before issuing the state's formal approval of a project, its Elderly and Persons with Disabilities Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located; and any public body that is a prospective subrecipient of capital assistance has provided an opportunity for a public hearing.

G. The subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase transit service.

H. The subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (Category I.F., ''Certifications and Assurances Required of Each Applicant.'')

I. The subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprises in U.S. DOT programs.

J. The state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. Each subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability, as set forth in the Certifications and Assurances required of each applicant for FTA assistance at Category 1.G of this document. If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a ''Certification of Equivalent Service,'' which states that when viewed in its entirety the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, meets the standard of equivalent service set forth in 40 CFR section 37.77(c).

K. The subrecipient has certified to the state that it will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations. (See Category VIII, ''School Transportation Agreement.'')

L. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

M. The subrecipient has submitted (or will submit) all applicable certifications and assurances currently required, including, but not limited to: a certification that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and other implementing requirements FTA may issue; a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project; a nonprocurement suspension and debarment certification; a bus testing certification for new models; a pre-award and post-delivery review certification; and a lobbying certification for each application exceeding $100,000. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances text of Categories I–XI of this document, but modified as necessary to accommodate the subrecipient's circumstances.

N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

O. The state recognizes FTA's authority to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations.

XIV. Certifications and Assurances for the Nonurbanized Area Formula Program

An Applicant that intends to administer, on behalf of the state, the Nonurbanized Area Formula Program must provide the following certifications and assurances. FTA may not award Nonurbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances by selecting Category XIV on the Signature Page.

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering on behalf of the state the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive and disburse Federal assistance authorized for 49 U.S.C. 5311; and to implement and manage the project.

B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

C. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance authorized for this project.

D. The state assures that before issuing the state's formal approval of the project, its Nonurbanized Area Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; to the extent applicable, projects are included in a metropolitan Transportation Improvement Program.

E. The state has provided for a fair and equitable distribution of Federal assistance authorized for 49 U.S.C. 5311 within the state, including Indian reservations within the state.

F. The subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase transit service.

G. The subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (See Category I.F, ''Certifications and Assurances Required of Each Applicant.'')

H. The subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs.

I. The state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. Each subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability, as set forth in the Certifications and Assurances required of each applicant for FTA assistance at Category 1.G of this document. If non-accessible vehicles are

being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a ''Certification of Equivalent Service,'' which states that when viewed in its entirety the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, meets the standard of equivalent service set forth in 40 C.F.R. section 37.77(c).

J. The subrecipient has complied with the transit employee protective provisions of 49 U.S.C. 5333(b), by one of the following actions: (1) signing the Special Warranty for the Nonurbanized Area Formula Program, (2) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (3) obtaining a waiver from DOL; and the state has certified the subrecipient's compliance to DOL.

K. The subrecipient has certified to the state that it will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance, and will also comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations. (See Category VII, ''Charter Service Agreement,'' and Category VIII, ''School Transportation Agreement.'')

L. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

M. The subrecipient has submitted (or will submit) all applicable certifications and assurances currently required, including but not limited to: a certification that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and other implementing requirements FTA may issue; a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project; a nonprocurement suspension and debarment certification; a bus testing certification for new bus models; a pre-award and post-delivery review certification; and a lobbying certification for each application exceeding $100,000. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances text of Categories I-XI of this document, but modified as necessary to accommodate the subrecipient's circumstances.

N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

O. The state recognizes FTA's authority to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations.

P. As required by 49 U.S.C. 5311(f), it will expend not less than fifteen percent of the Federal assistance authorized for 49 U.S.C. 5311(f) it receives during this fiscal year to carry out a program to develop and support intercity bus transportation, unless the chief executive officer of the state or his or her duly authorized designee certifies that the intercity bus service needs of the state are being adequately met.

XV. Certifications and Assurances for the State Infrastructure Bank Program

A state Applicant for a grant of Federal assistance for deposit in the Transit Account of the State Infrastructure Bank (SIB) within that state must provide the following certifications and assurances. The Federal Transit Administration (FTA) may not award Federal assistance to capitalize a SIB until the state Applicant provides these certifications and assurances by selecting Category XV on the Signature Page.

Based on its own knowledge and, as necessary, on information submitted by the participating parties, the state Applicant for Federal assistance for the Transit Account of its state SIB program authorized by either section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, certifies and assures that the following requirements and conditions will be fulfilled pertaining to any project financed with Federal assistance derived from the Transit Account of the SIB:

A. The state organization serving as the Applicant (state) agrees and assures the agreement of the SIB and each recipient of Federal assistance derived from the Transit Account of the SIB within the state (subrecipient) that each Project financed with Federal assistance derived from the Transit Account will be administered in accordance with: (1) the requirements of section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, (2) the provisions of FTA's SIB Guidelines, and any amendments thereto, (3) the provisions of FHWA and FTA Cooperative Agreement with the state to establish the state's SIB program, and (4) the provisions of the FTA Grant Agreement with the state that obligating Federal assistance for the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that Grant Agreement will not apply if it conflicts with any provision of National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or section 1511 of TEA–21, as amended, and FTA SIB Guidelines, the provisions of the Cooperative Agreement establishing the SIB program within the state, or the text within the FTA Grant Agreement.

B. The state agrees to comply with and assures the compliance of the SIB and each subrecipient of all applicable requirements for the SIB program, as those requirements may be amended from time to time. Pursuant to subsection 1511(h)(2) of TEA–21, applicants for assistance authorized by the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, agree that previous cooperative agreements entered into with States under section 350 of the National Highway System Designation Act of 1995, as amended, will be revised to comply with new requirements.

C. The state assures that the SIB will provide Federal assistance from its Transit Account only for transit capital projects eligible under section 1511 of TEA–21, and that those projects will fulfill all requirements imposed on comparable capital transit projects financed by FTA.

D. The state understands that the total amount of funds to be awarded for a Grant Agreement will not be immediately available for draw down. Consequently, the state assures that it will limit the amount of Federal assistance it draws down for deposit in the Transit Account of its SIB to amounts that do not exceed the limitations specified in the underlying Grant Agreement or the Approved Project Budget for that Grant Agreement.

E. The state assures that each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized by Federal statute for use in the Transit Account of the SIB, including the ability to comply with Year 2000 (Y2K) management of funds and investments, and to implement, manage, operate, and maintain the project and project property for which such assistance will support.

F. The state assures that the SIB will provide Federal assistance derived from the Transit Account only to a subrecipient that is either a public or private entity recognized under state law as having the legal capability to contract with the state to carry out its proposed project.

G. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

H. The state assures that the SIB will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed, including specific provisions that any security or debt financing instrument the SIB may issue will contain an express statement that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

I. The state assures that before the SIB enters into an agreement with a subrecipient under which Federal assistance within the Transit Account of the SIB will be disbursed to the subrecipient, the subrecipient's project

is included in the Statewide Transportation Improvement Program; all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located; and it has obtained from each subrecipient of capital assistance that is also a public body a certification that an opportunity for a public hearing has been provided.

J. The state assures that the subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, and other interested parties within the area.

K. The state assures that the subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (See Category I.F, ''Certifications and Assurances Required of Each Applicant,'' of the Federal Fiscal Year 1999 Certifications and Assurances for the Federal Transit Administration Programs.)

L. The state assures that the subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprises in U.S. DOT programs.

M. To the extent applicable, the state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. The state assures that the SIB will provide to the state an Assurance of Nondiscrimination on the Basis of Disability from each subrecipient, as set forth in the Certifications and Assurances required of each Applicant for FTA assistance. (See Category I.G, ''Certifications and Assurances Required of Each Applicant,'' of the Federal Fiscal Year 1999 Certifications and Assurances for the Federal Transit Administration Programs.) If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a ''Certification of Equivalent Service,'' which states that the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service the public entity offers to persons without disabilities. (See Category IX, ''Certifications Required for the Direct Award of FTA Assistance to an Applicant for its Demand Responsive Service,'' of the Federal Fiscal Year 1999 Certifications and Assurances for the Federal Transit Administration Programs.) This ''Certification of Equivalent Service'' must also state that the public entity's demand responsive service, when viewed in its entirety, is provided in the most integrated setting feasible and has equivalent: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions or restraints on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

N. The state assures that before the SIB provides Federal assistance from the Transit Account, each subrecipient will have complied with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project.

O. The state assures that each subrecipient has certified or will certify to the state that it will comply with applicable provisions of 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance, and will also comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations. (See Category VII, ''Charter Service Agreement,'' and Category VIII, ''School Transportation Agreement,'' of the Federal Fiscal Year 1999 Certifications and Assurances for the Federal Transit Administration Programs.)

P. Unless otherwise noted, the state assures that each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in paragraph Q of this Category XVI. Unless otherwise noted, the state assures that each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that the SIB will not provide financial assistance from the Transit Account for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that the SIB will provide no financial assistance from its Transit Account for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

Q. The state assures that the subrecipient has submitted (or will submit), when applicable, all certifications and assurances currently required, including, but not limited to: a certification that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, ''Third Party Contracting Requirements,'' and other implementing requirements FTA may issue; a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project; a nonprocurement suspension and debarment certification; a bus testing certification for new models; a pre-award and post-delivery review certification; and a lobbying certification for each application exceeding $100,000; assurances FTA requires for projects involving real property; and if required by FTA, an anti-drug program certification and an alcohol testing certification. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances of Categories I–XI of the Federal Fiscal Year 1999 Certifications and Assurances for the Federal Transit Administration Programs, but modified as necessary to accommodate the SIB and the subrecipient's circumstances.

R. The state agrees and assures that the SIB and each subrecipient will agree to permit FTA, U.S. DOT, and the Comptroller General to conduct audits to verify compliance with the foregoing requirements and stipulations.

Selection and Signature Pages follow.

BILLING CODE 4910–13–U

Appendix A

FEDERAL FY 1999 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE

Name of Applicant: _____

The Applicant agrees to comply with applicable requirements of Categories I - XV. ____
(The Applicant may make this selection in lieu of individual selections below.)
OR
The Applicant agrees to comply with the applicable requirements of the following categories it has selected:

I.	Certifications and Assurances Required of Each Applicant.	____
II.	Lobbying Certification	____
III.	Effects on Private Mass Transportation Companies	____
IV.	Public Hearing Certification for a Project with Substantial Impacts	____
V.	Certification for the Purchase of Rolling Stock	____
VI.	Bus Testing Certification.	____
VII.	Charter Service Agreement.	____
VIII.	School Transportation Agreement.	____
IX.	Certification for Demand Responsive Service	____
X.	Substance Abuse Certifications	____
XI.	Certification for a Project Involving Financing Costs	____
XII.	Certifications for the Urbanized Area Formula Program and the Job Access and Reverse Commute Program	____
	Transit Enhancement Activities Report Submitted	____
	(Required for Recipients with 200,000 or more population)	
XIII.	Certifications for the Elderly and Persons with Disabilities Program	____
XIV.	Certifications for the Nonurbanized Area Formula Program	____
XV.	Certifications for the State Infrastructure Bank (SIB) Program	____

(Both sides of this Signature Page must be appropriately completed and signed where indicated.)

Appendix A

FEDERAL FISCAL YEAR 1999 FTA CERTIFICATIONS AND ASSURANCES

(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW I, _____ (name), on behalf of the Applicant, declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and administrative guidance required for each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 1999.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in Appendix A, should apply, as required, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 1999.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, as implemented by U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with the Urbanized Area Formula Program, 49 U.S.C. 5307, and may apply to any other certification, assurance, or submission made in connection with any other program administered by FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature_____ Date: _____
Name_____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

for _____ (Name of Applicant)

As the undersigned legal counsel for the above named Applicant, I hereby affirm to the Applicant that it has authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project. Furthermore, if I become aware of circumstances that change the accuracy of the foregoing statements, I will notify the Applicant promptly, which may so inform FTA.

Signature_____ Date: _____
Name_____
Applicant's Attorney

Each Applicant for FTA financial assistance (except 49 U.S.C. 5312(b) assistance) and each FTA Grantee with an active capital or formula project must provide an Attorney's affirmation of the Applicant's legal capacity. The Applicant may enter its PIN number in lieu of the electronic signature of its Attorney, provided the Applicant has on file this Affirmation of its Attorney in writing dated this Federal fiscal year.

[FR Doc. 98–29684 Filed 11–5–98; 8:45 am]
BILLING CODE 4910–13–C

Friday
November 6, 1998

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 26

Mutual Recognition of Pharmaceutical Good Manufacturing Practice Inspection Reports, Medical Device Quality System Audit Reports, and Certain Medical Device Product Evaluation Reports Between the United States and the European Community; Final Rule

Memorandum of Understanding Between the Food and Drug Administration and the Office of the United States Trade Representative; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 26

[Docket No. 98N–0185]

RIN 0910–ZA11

Mutual Recognition of Pharmaceutical Good Manufacturing Practice Inspection Reports, Medical Device Quality System Audit Reports, and Certain Medical Device Product Evaluation Reports Between the United States and the European Community

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations pursuant to an international agreement between the United States and the European Community (EC). The agreement is entitled ''Agreement on Mutual Recognition Between the United States of America and the European Community'' (MRA). Under the terms of that agreement, the importing country authority may normally endorse good manufacturing practice (GMP) inspection reports for pharmaceuticals provided by the exporting authority determined by the importing authority to have an equivalent regulatory system. Likewise, the importing country authority may normally endorse medical device quality system evaluation reports and certain medical device product evaluation reports provided by conformity assessment bodies (CAB's) determined by the importing country authority to have equivalent assessment procedures. FDA is taking this action to enhance its ability to ensure the safety and effectiveness of pharmaceuticals and medical devices through more efficient and effective utilization of its regulatory resources. The proposed rule which published in the **Federal Register** on April 10, 1998 (63 FR 17744), carried an incorrect docket number in its heading. This final rule carries the correct docket number.

DATES: This regulation is effective on December 7, 1998. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication listed in new § 26.60(b), effective December 7, 1998. Written comments and information relevant to implementation of the MRA and this regulation may be submitted at anytime.

ADDRESSES: Submit written comments and information relevant to implementation of the MRA and this regulation to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Merton V. Smith, Office of International Affairs (HFG–1), Office of External Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0910, or E-mail: ''MSmith@oc.fda.gov''.

SUPPLEMENTARY INFORMATION:

I. Background

On June 20, 1997, the United States and the EC concluded an agreement on the MRA. The MRA includes two sectoral annexes covering products regulated by FDA. The sectoral annex on medical devices covers medical device quality system-related inspection reports and certain product evaluation reports. The sectoral annex for pharmaceutical GMP's covers pharmaceutical GMP inspection reports. The MRA also includes sectoral annexes covering products regulated by other U.S. regulatory agencies, including telecommunication equipment, electromagnetic compatibility, electrical safety, and recreational craft. Finally, the MRA includes a ''framework'' agreement that contains general provisions.

At the conclusion of negotiations, the United States and the EC submitted the text of the MRA to their respective authorities to complete the necessary procedures for approval and implementation. For FDA, these procedures included publishing a proposed rule that was published in the **Federal Register** of April 10, 1998 (63 FR 17744). The proposed rule was based on the provisions contained in the two FDA sectoral annexes and the ''framework'' agreement of the MRA concluded on June 20, 1997. FDA received comments from 14 persons in response to this proposed rule. Many of these comments supported the proposed rule. Some comments raised significant issues but none that, in FDA's view, necessitated any substantive changes to the proposed rule. On May 14, 1998, FDA informed the Office of the U.S. Trade Representative (USTR) that it supported the signing of the MRA. The MRA was signed in London on May 18, 1998. Provisions of the MRA are between the United States and EC, and do not create rights in third parties.

II. Summary of Comments

A. General Comments and Issues

Most comments by industry associations and pharmaceutical and medical device manufacturers generally were supportive of the MRA and the proposed rule. Some comments by others expressed concern about possible diminished public health and safety if certain precautions are not taken.

1. Five comments strongly supported the MRA and the proposed rule, citing its potential to improve patient access to safe and effective technologies, reduce unnecessary regulatory redundancies, enhance the access of United States and EC companies to each other's markets, provide significant savings to both companies and regulators, and set the stage for further regulatory cooperation and harmonization. They indicated that the proposed rule and the MRA allow for incorporation of the best regulatory attributes.

FDA agrees with these comments. FDA takes the view that equivalence of GMP reports and other conformity assessment reports and evaluations between the FDA and EC Member State authorities and CAB's can be relied on to help ensure the safety, quality, and effectiveness of products exported to the United States while also reducing the regulatory burden on manufacturers. For the United States, the MRA and this regulation also permit FDA to redirect some of its inspectional resources from countries whose systems are found equivalent to, or higher to, risk priorities not covered under the MRA. The agency may thus better target its limited foreign inspection and other resources devoted to imports and other regulatory concerns. Thus, FDA will be able to leverage its resources by relying on information from its counterpart regulatory authorities in foreign countries that have demonstrated equivalence. Under the MRA and this regulation, as equivalence is achieved between regulatory systems of EC Member State authorities, or CAB's, and FDA, there will be reduced need for importing countries to engage in resource-intensive foreign inspection, sampling, and examination of products being for entry from countries with equivalent systems. This can assist in speedier approvals of safe and effective products and in more comprehensive and effective surveillance of GMP's and quality systems. In addition, during the transition period, collaborative confidence-building activities between FDA and EC Member State authorities and CAB's can result in harmonization of requirements at a high level of

consumer protection, thus enhancing regulatory controls.

2. One comment described three fundamental principles which underlie the comment's concerns about the MRA and the proposed rule: (1) The paramount goal for FDA implementation of the MRA and the proposed rule must be to safeguard public health of U.S. consumers; (2) equivalence determinations performed by FDA must improve or at least maintain current U.S. public health protections; and (3) the United States' democratically accountable, policy-making process must be maintained.

FDA agrees with these comments. FDA has consistently articulated these same principles in its policies relating to international cooperative agreements over the last decade. In 1988, the FDA and Directorate-General III (Industrial Affairs) of the European Commission began early discussions in consideration of agreements in the areas of pharmaceutical and medical device GMP inspections. The FDA's primary motivation in seeking such agreements was at that time, and still is, a desire to leverage its limited inspectional resources and to enhance public health protection through increased assurance that regulatory counterparts are applying similar controls. FDA described the value of pursuing international cooperative agreements with selected foreign regulatory bodies in its 1992 ''Report of the Task Force on International Harmonization'' (Ref. 1). The Task Force concluded that such international agreements are an effective means of facilitating the safety, effectiveness, and/or quality of products that are offered for import into the United States and of efficiently setting priorities for the agency's inspectional resources. The Task Force concluded that a properly conceived and executed agreement would permit FDA's use of foreign government inspectional information to assist in the agency's regulatory decision-making and could help FDA to set priorities for foreign inspection or import surveillance programs. As a result of specific Task Force recommendations, in 1995 FDA revised its Compliance Policy Guide (Ref. 2) to emphasize that the agency's primary goals for entering into agreements with foreign governments are for the purposes of better utilizing its regulatory resources and furthering its mission of protecting the U.S. consumer.

The significant increase of international commerce in pharmaceuticals and medical devices and the question of how FDA can continue to ensure the safety and effectiveness of these medical products prompted the agency to convene a Foreign Inspection Working Group in 1995 to evaluate the agency's foreign inspection program and related import product monitoring. In 1997, this group issued its ''Summary Report of the Foreign Inspection Working Group'' (Ref. 3) that recognized the need for inspectional approaches that involve cooperative activities such as the development of international agreements between FDA and counterpart regulatory authorities in other countries.

Section 26.21 of this rule provides that the importing country has the right to fulfill its legal responsibilities by taking actions necessary to ensure the protection of human and animal health at the level of protection it deems appropriate. In addition, under § 26.74 nothing in this part limits the authority of FDA to take appropriate and immediate measures that it determines necessary to prevent compromising human health and safety, or to fulfill its legislative, regulatory, or administrative responsibilities.

To ensure a democratic and open process, the FDA will make available in a public docket the complete administrative file that constitutes the basis for FDA's equivalence determinations. In addition, any other related documents the agency receives under the MRA and this regulation will be releasable to the public (or not releasable) according to current Freedom of Information Act (FOIA) provisions. FDA also will assess the degree to which a foreign regulatory system or CAB is accountable to consumers and other interested parties as part of its equivalence determinations. (App. D of subpart A, criteria I.F.). A regulatory system that is not sufficiently transparent to assess accountability may not be found equivalent.

3. One comment stated that the MRA and the proposed rule would replace FDA-conducted inspections of foreign pharmaceutical plants and FDA reviews of foreign medical devices with inspections and evaluations performed by EC Member State authorities and CAB's located in EC Member States.

The implementation of the MRA and this regulation may or may not result in the replacement of some FDA inspections and product evaluations of medical devices produced by manufacturers located in EC Member States. Inspection reports and product evaluations may normally be endorsed under certain conditions only if, after a comprehensive assessment during the 3-year transition period, FDA determines that such reports will provide the information that FDA needs for its regulatory decision making.

4. One comment stated that the MRA negotiation took place primarily for trade facilitation purposes. Evidence of this conclusion was offered by the fact that the negotiations were co-chaired by USTR and the Department of Commerce (DOC) and that press releases and other public statements have characterized the discussions as ''trade negotiations.''

FDA participated in the negotiations leading to the MRA under its own authority to enter agreements with foreign authorities (see, inter alia, sections 519 and 803 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(i), 383)). Furthermore, the agency believes that the MRA and this regulation, properly based on a rigorous determination of equivalence of regulatory systems, can help ensure the safety, quality, and effectiveness of these imports while also reducing the regulatory burden on manufacturers, thereby facilitating availability of these important medical products. The goals of facilitating trade and protection of the public health are not necessarily incompatible. The role of USTR and DOC was one of coordination. FDA's ability to reach decisions on the basis of its public health priorities was upheld, and never compromised, during the negotiations. FDA officials led the negotiations concerning the FDA annexes, and FDA's views were incorporated into the portions of the ''framework'' agreement where FDA's interests were affected. USTR and DOC as well as European trade counterparts undoubtedly desired an MRA for trade reasons. Those agencies, however, supported FDA's position in the negotiations and did not interfere with FDA's desire to maintain health and safety protections. FDA believes that this degree of FDA autonomy will continue as the MRA and this regulation are implemented.

Furthermore, FDA has entered into an interagency Memorandum of Understanding (MOU) with the USTR that ensures that any decisions about the MRA that relate to matters under FDA's jurisdiction will be made only by FDA (see the notice of availability for this MOU published elsewhere in this issue of the **Federal Register**). Specifically, the MOU requires that USTR notify FDA of matters that the Joint Committee will be considering. The MOU states that while USTR would normally speak and vote for the U.S. Government in the Joint Committee, subject to arrangements with other agencies covered by the MRA, FDA will speak for, and vote on behalf of, the U.S.

Government on any matter pertaining to FDA's statutory or regulatory authority raised within the Joint Committee or within any other bodies established under the MRA. In addition, the Sectoral Annex for Pharmaceutical GMP's is specifically exempted from certain provisions of the ''framework'' agreement, in order to avoid any possible confusion about the use of CAB's that are not utilized in the Annex. Finally, throughout the ''framework'' agreement and the FDA product-related annexes there are clear safeguard requirements that stipulate if there are health and safety concerns on the part of the importing authority, the importing authority may take appropriate action.

5. One comment stated that the goal of the MRA and the proposed rule appears to be to harmonize health, safety, and environmental standards to the lowest acceptable levels.

While the process of confidence-building and equivalence determination may lead to harmonization of some standards, FDA disagrees that lowest common denominator standards will result. During the transition period, collaborative activities and joint equivalence determinations by FDA-EC Member State authorities and CAB's may result in harmonization of requirements that will enhance consumer protection. By law, section 803(c)(1) of the act requires the Commissioner of Food and Drugs (by delegation under 21 CFR 5.10) to work to ''harmonize regulatory requirements,'' but conditions these actions on findings by the Commissioner that ''such harmonization continues consumer protections consistent with the purposes of this Act.'' FDA's experience in working as a party to the Global Harmonization Task Force (GHTF), the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use, and the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products has demonstrated that regulatory public health authorities do not compromise health and safety as standards are harmonized, because the relevant discussions and and the resulting documents have been thorough, science-based, and protective of public health. (Harmonization can lead to higher standards because in instances where one regulator has a requirement that others lack, the ensuing discussions of why one regulator has such a requirement often leads to understanding, acceptance, and inclusion of a corresponding provision in the harmonized standard.)

6. One comment expressed the belief that the MRA and the proposed rule put U.S. consumer protection at risk of compromise and cited as evidence the fact that the negotiations extended well beyond their original deadlines, and were reportedly near collapse due to concerns about whether EC regulation is as stringent for pharmaceuticals and medical devices as U.S. regulation.

The comment is correct in stating that the MRA negotiations took longer than expected and that FDA had concerns during the early stages of MRA discussions that early MRA drafts would not provide appropriate public health protections for U.S. consumers. For example, the provision for a 3-year confidence-building transition period was not considered during early MRA discussions. Acceptance of the need for a transition period during which time equivalence would be assessed was one of the keys to moving the MRA negotiations ahead. Indeed, Article 2 of the Sectoral Annex for Pharmaceutical GMP's states that the determination of equivalence of the regulatory systems by the parties is the cornerstone of that Annex. FDA believes that the requirement of a comprehensive assessment of equivalence before inspection reports and product evaluations will be normally accepted, and other safeguard clauses such as §§ 26.21 and 26.74, as discussed previously, provide strong public health protections. In the medical device provisions, EC acceptance that FDA must, as a matter of law and policy, maintain final decision making authority over premarket notifications, and that the MRA could cover premarket notifications only for certain devices, enabled conclusion of the MRA.

7. One comment stated that FDA must make a commitment to seek additional resources to accomplish the activities required by the MRA and the proposed rule.

In the preamble to the proposed rule, FDA acknowledged that neither startup costs nor operational costs are being covered by additional FDA funding in FDA's current budget and that startup costs will have to be absorbed by current funding. Certain key activities of the MRA and this regulation, such as joint inspections of manufacturers located in EC Member States, may be accomplished as part of FDA's inspections of these manufacturers that have been scheduled for the next fiscal year as part of FDA's normal budget process. Other activities of the MRA and this regulation will likely result in new costs. These additional costs are difficult to estimate because they depend significantly on the initial findings from FDA's equivalence assessments of EC Member State authorities and CAB's. FDA will likely be better able to estimate these additional costs as experience is gained during the first year of the transition period. After the first year, FDA will reassess its need to seek additional funding for the activities required by the MRA and this regulation.

8. One comment stated that a failure to devote adequate resources to the programs of the MRA and the proposed rule during the implementation stage would endanger their success.

FDA agrees with this comment. FDA will engage in activities during implementation as its resources permit. FDA recognizes the critical need to undertake a number of activities during the transition process as part of its assessment of the equivalence of CAB's located in EC Member States, including participating in seminars, workshops, joint training exercises, and observed inspections, as well as the analysis required for the equivalence determination process. In addition, any significant problem that is identified may require additional activities to address and resolve it. Finally, the parties will need to develop a consensus on what must be present in quality system and product evaluation reports (or, where harmonization cannot be achieved, each side will need to identify what it needs). Further, the parties will develop a notification and alert system for defects, recalls, and similar problems. All of these activities will require resources, and FDA recognizes their completion is critical to the success of the MRA and the implementation of this regulation.

9. One comment stated that the number of repetitive inspections must actually decrease if the potential value of the MRA and the proposed rule is to be realized.

FDA's interest in the MRA is its view that public health protection can be better assured through enhanced regulatory cooperation. Although FDA agrees that cost savings to industry and to government regulatory authorities can be realized by an actual decrease in the number of inspections that are unnecessarily duplicative, there are additional benefits that may be achieved by the activities required under the MRA and this regulation that make the MRA endeavor worthwhile. For example, the cooperative activities between FDA and EC Member State authorities that will of necessity be part of the equivalence determination

process may result in harmonization or congruence of requirements resulting in strengthened consumer protection, more effective regulatory approaches, and reduced regulatory burden on each side of the Atlantic.

10. One comment suggested that FDA must use the inspectional savings anticipated by the MRA and the proposed rule for increased surveillance activities.

Any resource savings resulting from the MRA and this regulation will be used by FDA as necessary and appropriate to enhance the effectiveness of FDA's regulatory programs.

11. One comment stated that FDA should complete confidence building activities as expeditiously as possible and should devote adequate resources to that job.

FDA agrees with this comment and, as stated previously, will devote resources to this program to the best of its ability.

12. One comment noted that the proposed rule did not address FDA guidance documents and asked how guidance documents would be handled under the MRA and this regulation. The comment implied that some FDA guidance documents contain requirements.

FDA will handle guidance documents under this MRA as it handles all guidance documents, according to FDA's Good Guidance Practices (62 FR 8961, February 27, 1997). If FDA determines that there is a need for guidance documents under the MRA, it will publish them or refer to them as appropriate. FDA periodically makes available to the public lists of guidance documents and those that are relevant to the implementation of the MRA or this regulation will be referred to during such implementation. Guidance documents do not themselves contain requirements; they do sometimes refer to or explain requirements that exist in statutes or regulations.

13. One comment expressed concern that the MRA and the proposed rule might result in lower health, safety, and environmental standards in both the United States and the EC. The comment expressed concern that the ''framework'' agreement might allow undue pressure to relax regulation in one sector of commercial activity in order to secure market access in another unrelated sector. Consequently, the comment asked FDA to seek ''the elimination of the umbrella framework agreement'' to ensure that U.S. health and safety standards are not compromised.

FDA declines to take the action requested by the comment. The ''framework'' agreement will not result in lower health or safety standards for FDA-regulated products. The MRA and this regulation expressly preserve the authority of a party to determine, ''through its legislative, regulatory, and administrative measures, the level of protection it considers appropriate for safety; for protection of human, animal, or plant life or health; for the environment; for consumers; and otherwise with regard to risks'' (MRA Article 15, ''Preservation of Regulatory Authority,'' and § 26.74 of this regulation).

Additionally, this regulation expressly recognizes, at several places, that statutory and regulatory requirements applicable to drugs and devices remain in place unchanged (see, e.g., § 26.1(b) (definition of ''equivalence'') see also § 26.32(c) and § 26.62(c) and that each party may take actions necessary to ensure the protection of human and animal health ''at the level of protection it deems appropriate'' (see § 26.21; see also § 26.74(a) and (b) (preservation of regulatory authority)).

This position is consistent with both the statutes FDA administers and international agreements such as the Agreement on Technical Barriers to Trade which expressly recognizes that ''no country should be prevented from taking measures necessary to ensure the quality of its imports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade * * *.'' (See paragraph 6 of the preamble to the Agreement on Technical Barriers to Trade).

FDA further notes that, under an MOU with USTR concerning the MRA (see the notice of availability for this MOU published elsewhere in this **Federal Register**), USTR will notify FDA of matters to be considered by the Joint Committee, which will be established to consider issues relating to the effective functioning of the MRA. While USTR normally will speak and vote for the United States in the Joint Committee, subject to arrangements with other agencies covered by the MRA, FDA will speak for and vote on behalf of the United States on any matter pertaining to FDA's statutory and regulatory authority. FDA will also represent the U.S. Government on such matters in any other committee or bodies with similar functions established under the MRA or its annexes. This MOU will ensure that, insofar as FDA-regulated products and issues are concerned, public health and safety issues are adequately considered and addressed.

14. One comment strongly disagreed with FDA's position that a 30-day comment period for the proposed rule was adequate. The comment was characterized as ''a preliminary identification of key issues involved in the [MRA or the proposed rule] process'' and requested that the comments be viewed as ''the beginning of an ongoing open process in which public comments will be considered at later junctures'' with future opportunities to discuss issues with FDA and other government officials.

As stated in the preamble to the proposed rule (63 FR at 17744 at 17747), FDA provided a 30-day comment period because a longer comment period was unnecessary in light of the numerous opportunities for public input the agency provided during the MRA negotiations. These opportunities included the creation of a public docket for MRA-related issues on May 9, 1996, dissemination of a document concerning the MRA on October 18, 1996 (including an opportunity for public comment on that document), public exchange meetings on March 31, 1995, and October 30, 1996, a Transatlantic Business Dialogue (TABD) meeting on November 8 and 9, 1996, which included a discussion of the MRA, and other public meetings on March 14, 1997, and September 23, 1997. The MRA itself was initialed by governmental representatives on June 20, 1997, and has been available on the World Wide Web (WWW) for over a year. Therefore, the agreement upon which the proposed rule was based had been available for analysis and comment by interested members of the public for some months. In view of these opportunities for public discussion and consideration of the MRA, the 30-day comment period for the proposed rule was adequate.

FDA also stated that it was in the public interest to proceed expeditiously to implement the MRA, and that the 30-day comment period was not contrary to Executive Order 12889 (63 FR 17744 at 17747).

As for the comment's remarks concerning future opportunities for public comment, the agency shares this interest and notes that the public has many avenues for contacting FDA on almost any issue. For example, a person may send a letter to the agency, request a meeting, submit a citizen petition to request issuance or revision of a

regulation or to request agency action or reconsideration on a particular matter, or submit comments on a document published in the **Federal Register** (see, e.g, 21 CFR 10.20, 10.30, 10.33, 10.65).

In sum, FDA agrees that the agency will need to communicate with the public, on a regular basis, as the MRA is being implemented. Interested persons may submit comments on the MRA, or implementation of the MRA, to the agency at any time. In addition, as noted previously FDA's administrative practices and procedures regulations (21 CFR part 10) provide a range of processes for interaction with the agency. Furthermore, the agency contemplates frequent meetings and other communications with the public as MRA implementation progresses.

B. Composition and Operation of the Joint Committees

Several comments encouraged, or would revise the rule to provide for, opportunities for public, industry, or specific agency involvement in various programs or bodies established by the MRA and the proposed rule or by their operation.

1. Four comments said that FDA should ensure industry or public access to and participation in the activities of the MRA and the proposed rule. Three comments advocated industry participation and suggested that FDA and the EC consult the industry during the transitional and operational phases of the confidence building stage. Two of these three comments specifically identified TABD as being critical or essential to implementing the MRA and the proposed rule. Another comment expressed the opposite view, i.e., concern about what the comment described as the TABD's involvement in the MRA negotiations. One comment asked FDA to ensure greater public participation and access for nongovernmental organizations in future mutual recognition agreement negotiations and throughout their implementation.

The agency appreciates and values public and industry input and advice on many matters and intends to employ a variety of means to seek input from the public on the implementation of the MRA and this regulation. However, the MRA and its sectoral annexes represent an agreement between governments that contemplates examination of one another's equivalence in specific areas of regulation. Although FDA believes it would be inappropriate to amend the rule to require industry or consumer participation or the participation of specific industry or consumer representatives on delegations to meetings or to require FDA or the EC to consult industry, FDA plans to consult interested persons—whether they represent the industry, public interest groups, or any other interested person—at appropriate stages of implementation of the MRA and this regulation.

As for the comment requesting greater public participation in future mutual recognition agreement negotiations and implementation, that request is outside the scope of this rule. However, we refer interested persons to ''A Plan that Establishes a Framework for Achieving Mutual Recognition of Good Manufacturing Practices Inspections,'' dated May 20, 1998 (see ''What's New on the FDA Website'') (''www.fda.gov/opacom/newonweb.html'').

2. Four comments discussed representatives to either the Joint Committee or the Joint Sectoral Committee in proposed §§ 26.17 and 26.47 (''Role and Composition of the Joint Sectoral Committee'') and 26.73 (''Joint Committee''). Three comments requested clarification as to which U.S. Government agencies would be represented on the Joint Committee or the Joint Sectoral Committees; two comments advocated including officials of USTR and the Department of Commerce on the Joint Sectoral Committees; and one comment recommended including EC trade offices on the Joint Sectoral Committees. All four comments advocated industry representation, or regular participation, in the Joint Committee and/or the Joint Sectoral Committees.

FDA declines to amend the rule to describe which U.S. or EC governmental bodies will send representatives to meetings of the Joint Committee or Joint Sectoral Committees as requested by the comments. In general, the government representatives to either the Joint Committee or the Joint Sectoral Committees will vary depending upon the issues presented to those committees (see, e.g., § 26.73(a) (stating that the Joint Committee consists of ''representatives'' of both parties) and § 26.73(b) (authorizing the Joint Committee to establish Joint Sectoral Committees ''comprised of appropriate regulatory authorities and others deemed necessary''). Thus, each party has the flexibility to determine which government authorities should be present and to match a particular governmental authority's expertise to the issue or issues before a committee. Amending the rule so that either committee would have to include specific representatives of U.S. Government authorities would unnecessarily impair such flexibility, and it would be especially inappropriate for FDA to amend the rule to specify what representatives the EC would send to the committees.

In any case, as explained in section II of this document, the USTR will normally speak for and vote on behalf of the United States in the Joint Committee, subject to arrangements with other agencies covered by the MRA, and FDA will speak for and vote on behalf of the United States on any matter pertaining to FDA's statutory or regulatory authority. Furthermore, the Joint Committee (when FDA is representing the United States) and the Joint Sectoral Committee likely will be addressing technical issues of the sort that FDA, not USTR or DOC, will be considering. The agency is confident that, in all cases, the composition of the Joint Committee or Joint Sectoral Committees will be appropriate for the topics being discussed.

As for the comments seeking industry representation or participation in the Joint Committee or the Joint Sectoral Committees, FDA declines to revise the rule to require such industry representation or participation. Because the MRA, including its sectoral annexes, is an agreement between governments, it is neither necessary nor appropriate to amend the rule to include or to require nongovernmental entities or organizations on the Joint Committee or the Joint Sectoral Committees.

3. One comment asked for clarification about the composition of the Joint Committee and asked whether U.S. citizenship is required for U.S. members.

U.S. representatives addressing FDA topics will be FDA officials. Except in extremely rare circumstances, U.S. citizenship is a requirement for employment by FDA. European representatives will be European Commission officials, possibly accompanied by officials of member country regulatory authorities.

C. Transparency and Confidentiality Issues

Several comments discussed the need for ensuring public or industry participation in equivalence or other regulatory matters under the rule. Other comments emphasized a need for withholding certain information, such as trade secrets and confidential commercial information, from public disclosure.

1. One comment suggested that the rule contain a mechanism for public participation in the equivalence determination process. The comment would provide the opportunity for public comment or input throughout the 3-year transition period, as soon as FDA

decides which foreign regulatory systems and CAB's it will review to determine whether they are equivalent, and again when FDA makes a preliminary determination of equivalence. The comment also called for public notice in the **Federal Register** and a response to any public comments when FDA issues a final determination.

FDA intends to hold periodic meetings with interested parties. FDA also plans to prepare and to make public summaries of key meetings held with its EC counterparts concerning implementation of the MRA and this regulation. Further, FDA will make available to the public the administrative file that constitutes the basis for any of FDA's equivalence determinations subject to exemptions from disclosure provided in the FOIA and restrictions in related statutory provisions discussed in the response to comment 2 in section II.C of this document. These approaches should give interested persons insight as to the information FDA considered when making an equivalence determination.

FDA also will use the **Federal Register** and its Internet home page to make available information on equivalence determinations under the MRA and this regulation. Interested persons can submit comments on these determinations.

The agency believes it is important that all interested parties have an opportunity to contribute to the equivalence assessment process. To facilitate such contribution, FDA intends to hold public meetings during the 3-year transition period. In addition, FDA invites all interested persons to provide the agency with information that is: (1) Generally relevant to implementation of the MRA and this regulation; and, (2) of particular relevance to equivalence criteria in Appendix D of subpart A of this rule, and their application to the authorities listed in Appendix B of subpart A of this rule. Information should be sent to the Dockets Management Branch (address above), and should be identified with docket number 95N–0185.

2. Three comments would revise the proposed rule to ensure that the public has access to: Draft programs for assessing equivalence of a regulatory system under proposed § 26.6(b); information provided by a foreign government concerning that government's regulatory activities under proposed § 26.6(c); ''audit'' reports by European authorities submitted to FDA; or records of CAB's reviewed by a foreign government to the extent that such records would be publicly available if they were reviewed by FDA. One comment explained that public disclosure would ensure accountability and enable U.S. consumers to maintain confidence in an ''equivalent'' inspection system. One comment would also revise the proposed rule to state expressly that neither party may obstruct public access to information that is publicly available under the laws or regulations of that party.

In contrast, four comments sought clarification concerning disclosure or confidentiality issues and proposed § 26.76, such as whether reports between the parties would be subject to public disclosure under the FOIA; whether information provided to the EC would be subject to EC confidentiality policies; and whether alert or vigilance reports (required by proposed § 26.50) exchanged between the parties as part of an ongoing investigation would be subject to public disclosure.

FDA declines to revise the rule as suggested by the comments. Under § 26.76(a) of this regulation and Article 17 of the MRA, each party agrees to maintain, to the extent required under its laws, the confidentiality of information exchanged under this regulation and the MRA. Trade secrets, confidential commercial or financial information, and information relating to an ongoing investigation are not subject to public disclosure (see § 26.76(b)). Additionally, the parties may designate portions of information that it considers to be exempt from disclosure, and parties are to take all precautions reasonably necessary to protect information exchanged under the MRA and this regulation from public disclosure (see § 26.76(c) and (d)).

Those receiving information under the MRA will treat the information according to their domestic laws and policies. FDA will treat information it receives consistent with the FOIA, Privacy Act, and FDA's regulations and policies. EC Member States will treat information they receive according to the applicable laws in their respective territories. Therefore, information supplied to FDA by a foreign government or CAB and other information or documents discussed by the comments are subject to the rules on public disclosure (or nondisclosure) in the FOIA, the Privacy Act, parts 20 and 21 (21 CFR parts 20 and 21). FDA further notes that other laws, regulations, and agreements may provide additional safeguards against public disclosure of trade secrets and confidential commercial information. For example, section 301(j) of the act (21 U.S.C. 331(j)), in brief, prohibits any person from using to his or her own advantage or revealing trade secret information acquired by FDA under various provisions of the act. Article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (better known as the ''TRIPS'' agreement), to which the United States is a signatory, states that:

> Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

These laws and agreements would also be applicable to information and documents acquired by FDA under the MRA and this regulation. Consequently, given the existence of various agreements, laws, and regulations pertaining to public disclosure and confidentiality, no revision to this rule is necessary.

The public availability of the documents or information identified in the comments would, therefore, depend on whether they contained information that, under U.S. laws, regulations, or other obligations, is exempt from public disclosure. In some instances, portions of a document may be publicly available. For example, alert or vigilance reports under § 26.50, when provided to FDA, would be available for public disclosure under § 20.111 if the investigation of the reported incident has been completed; however, personal identifiers would be redacted, as FDA currently does under § 20.111.

3. Two comments would revise proposed § 26.76 so that a person submitting information to FDA could decide whether all or part of the information is confidential or trade secret and therefore not subject to public disclosure.

FDA declines to revise the rule as suggested by the comments. The agency believes this issue is handled adequately under current FDA regulations and policies. FDA policy is to make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, property rights in trade secrets and confidential commercial or financial information, and FDA's need to promote frank internal policy deliberations and to pursue regulatory activities without disruption (see § 20.20). Under FDA regulations, marking records submitted to FDA as confidential raises no obligation by FDA to regard such records as confidential, to return them

to the person submitting the records, to review the records to determine whether all or part of them are available for public disclosure, or to withhold them from public disclosure (see § 20.27). FDA determines whether data or other information are confidential and not subject to public disclosure, consistent with § 20.28.

4. One comment would revise proposed § 26.76 so that trade secrets, ongoing investigations, and patient records are confidential.

FDA declines to amend the rule as requested by the comment. Such a revision is unnecessary given current statutory and regulatory requirements involving public disclosure and confidentiality, including the prohibition in section 301(j) of the act against disclosure of trade secrets, all of which apply to information FDA receives from the regulatory authorities and CAB's.

5. One comment would revise the rule so that a foreign country receiving documents from FDA would have to make those documents available to the U.S. public, even if the foreign country's laws would not make those documents publicly available. The comment would make information submitted to a foreign country available to the public if that information were publicly available in the United States.

FDA declines to revise the rule as suggested by the comment. Requiring a foreign country to make information available to U.S. citizens when such disclosure would be contrary to the foreign country's own laws and regulations is beyond the scope of this rulemaking and beyond FDA's regulatory authority. In addition, the public availability in the United States of information provided to EC officials is already dealt with in FDA's regulations, particularly § 20.89. (Under § 20.89, disclosure of nonpublic information to foreign officials does not automatically result in that information being available to the public generally.)

6. One comment would revise proposed § 26.20 as it pertains to the application of the alert system against individual companies. The comment expressed concern about lack of transparency and due process before a company is placed in or removed from ''a negative regulatory status'' and suggested that the elements to be considered as part of the alert system be described.

The comment misunderstands the purpose of the alert system provisions of the MRA and this regulation. The agency wishes to clarify that the purpose of the alert system is to implement a timely exchange of product quality information and not information on the regulatory status of inspected firms. The agency is keenly aware of the need to avoid predecisional or otherwise inappropriate regulatory classification of a firm or product. In implementing § 26.20, FDA intends to apply the same standard of fairness and due process it currently affords to manufacturers with respect to regulatory matters. While keeping in mind the need to be fair to manufacturers, however, the agency must keep public health and safety paramount in ensuring that the alert system functions effectively to protect consumers from unsafe or ineffective products. Regarding ''transparency,'' as discussed in section II of this document, FDA will apply to the alert system established by the MRA and this regulation the applicable requirements as to disclosure and nondisclosure.

The proposed rule did set forth the elements to be considered in developing a two-way alert system (see 63 FR 17744 at 17752), and the alert system is designed to serve as a means for notifying each party of crises and emergencies. For example, the documentation element for the two-way alert system refers to elements such as ''definition of crisis/emergency and under what circumstances an alert is required'' and ''mechanism of health hazards evaluation and classification'' (id.). The crisis management system element mentions ''crisis management and communication mechanisms,'' ''establishment of contact points,'' and ''reporting mechanisms.'' In short, the alert system does not place specific firms in a ''negative regulatory status'' or otherwise punish firms as the comment suggests.

7. One comment asked about the confidentiality of submissions under the MRA, particularly submissions to medical device CAB's.

Confidentiality by FDA and EC regulatory authorities is addressed under Article 17 of the MRA. Confidentiality concerns are also addressed in FDA's regulations (e.g., part 20) and guidance materials. FDA urges manufacturers to include clear and definitive language regarding their views on the confidentiality of submissions in contracts developed with CAB's. Just as submitters currently identify information they believe to be confidential commercial or trade secret information in submissions to the agency, they should clearly mark the same types of information in submissions to CAB's. Although FDA needs to make the final decisions as to confidentiality, as discussed previously in comment 3 in section II.C of this document, the contractual agreement between submitters and the CAB's should address the desired handling of information marked in this manner and contractual provisions should specifically address the need to share information with regulatory agencies participating in the MRA, including FDA.

D. Equivalence issues

1. One comment recommended that equivalence determinations and suspensions of equivalence determinations should be made by the importing authority only, rather than jointly by the parties to the MRA and the proposed rule. The exporting country should develop the case for equivalence, while the importing country should have complete control over the final equivalence decision. This would maintain the importing country's sovereign prerogative to protect the health and safety of its citizens.

FDA agrees that the importing authority must have control over the decision as to whether the exporting authority is equivalent, and the agency believes that the decision-making process set up by the MRA and this regulation provides adequately for this. The MRA and this regulation stipulate that equivalence determinations will be made by the Joint Sectoral Committee, which consists of representatives of the parties. This regulation states that decisions of the Joint Sectoral Committee ''will be taken by unanimous consent'' (§§ 26.17(b) and 26.47(b)). Therefore, no equivalence determinations can be reached in the Joint Sectoral Committee without concurrence by both sides. Hence, in all cases, the relevant authority of the importing country (FDA, in the case of imports into the United States) will have definitive decision making authority.

Similarly, the importing party's right to determine that an equivalence determination should be suspended is also protected by the MRA and this regulation. Decisions to suspend equivalence are taken in the Joint Sectoral Committee, and when that Committee cannot reach unanimous consent on the appropriate action, the matter is referred to the Joint Committee. (As discussed earlier, FDA officials will speak for, and vote on behalf of, the U.S. Government on any matter pertaining to FDA's statutory or regulatory authority raised within the Joint Committee or Joint Sectoral Committees.) If unanimous consent is not reached within a set time period in the Joint Committee, the contested authority must be suspended. Thus, if

during these deliberations, the importing authority remains convinced that an exporting authority's equivalence determination should be suspended, the contested authority will be suspended even if the other party disagrees.

Furthermore, the importing country's sovereign prerogative to protect the health and safety of its citizens is further protected for pharmaceuticals by § 26.21 and for medical devices by § 26.67(f). Section 26.21 provides that a party may, if necessary to ensure the protection of human and animal health at the level of protection it deems appropriate, take actions such as suspension of the distribution of the pharmaceutical, product detention at the border of the importing country, withdrawal of the batches and any request for additional information or inspection as provided in § 26.12. Section 26.67(f) provides that a party may, prior to the suspension of a CAB, cease accepting the results of conformity assessment procedures performed by that CAB if the decision for such action is made on the basis of health, safety or environmental considerations, among others. The ''framework'' of the MRA and this regulation also contain a provision (Article 15 and § 26.74, respectively) preserving domestic legislation.

2. One comment stated that equivalence determinations must be based on an exacting review of the foreign regulatory system. This comment emphasized that equivalence should be determined to exist only where a finding can be made that the foreign system meets or exceeds the level of public health protection, enforceability, transparency, and effectiveness of the U.S. system.

FDA agrees with this comment, and intends to carry out a careful, detailed, and complete review of foreign regulatory systems in order to determine whether equivalence does, in fact, exist. FDA's review will examine whether the foreign system, as it is implemented by the exporting authority, provides the same (or a higher) level of public health assurance as the FDA system. The enforcement activities of the foreign regulatory system and the foreign system's effectiveness in assuring public health protection are very important components of the overall equivalence analyses. For pharmaceuticals, they are specifically covered in subpart A of this regulation, Appendix D, Subsection I (Criteria for Assessing Equivalence for Post- and Preapproval). Criterion I. (Ability to enforce requirements and to remove products found in violation of such requirements from the market) and Criterion V. (Execution of regulatory enforcement actions to achieve corrections, designed to prevent future violations, and to remove products found in violation of requirements from the market) focus on the execution of regulatory enforcement actions. All of the criteria taken as a whole cover the public health protection and effectiveness of the foreign system. In addition, Criterion I. F. (Accountability of the regulatory authority) relates to transparency, in that there must be a system through which the regulatory authority is accountable for its actions. Similar criteria will be developed and applied for competent authority oversight of medical devices. FDA expectations as to medical device CABs' reviews of premarket evaluations are set forth in a guidance document announced in the **Federal Register** of July 2, 1998 (63 FR 36240).

3. One comment requested clarification of equivalence assessment (§ 26.6) and asserted that enforcement and regulatory compliance systems between the United States and the EC need to be comparable. The comment explained further that, before assessments can be made, local regulations for pharmaceutical manufacturing should be in place. The comment added that EC countries have not issued and made public such regulatory documents as warning letters, to identify unacceptable manufacturers.

The agency emphasizes that, as stated in the definition of equivalence, to be equivalent to the United States, EC regulatory authorities need to be ''sufficiently comparable to assure that the process of inspection and the ensuing inspection reports will provide adequate information to determine whether respective statutory and regulatory requirements of the authorities have been fulfilled.'' (§ 26.1(c)). However, ''[E]quivalence does not require that the respective regulatory systems have identical procedures.'' Furthermore, among the criteria for assessing equivalence, contained in Appendix D of subpart A, is the ''[A]bility to enforce requirements and to remove products found in violation of such requirements from the market'' and ''[A]ccountability of the regulatory authority.'' The agency expects that these two criteria, in combination with others in Appendix D, should address the comment's concerns.

The agency does not understand the comment's apparent premise that, before assessment can commence, regulatory systems must already be comparable. The agency intends to assess the equivalence of an authority based upon the criteria in Appendix D of subpart B as they exist at the time the agency makes the assessment, and needed steps can be taken to address any shortcoming noted.

4. One comment emphasized the need to assure a level playing field in terms of inspectional activity (i.e., the length and frequency of inspections and the number of auditors). This comment recommended collection of statistics about these activities during the transition period and then steps to ensure a reasonable harmonization in approaches between European and FDA audits.

FDA agrees with this comment. Equivalence must exist not only in the foreign authority's legislation and written procedures (including those concerning audits), but also in the manner in which these policies are actually implemented. Under the MRA and this regulation, the conduct of inspections is one of the criteria (Criteria IV) that must be considered in reaching equivalence determinations for pharmaceuticals.

5. One comment questioned how the MRA and the proposed rule would stop a country from relaxing its standards to create an industry-friendly regulatory environment within its jurisdiction, resulting in movement of industry from countries with strict enforcement to countries of less strict enforcement.

There are limits to what governments can do to influence corporate choices about location or relocation of manufacturing sites; many factors play a part in these corporate choices. In any case, the MRA and this regulation have several mechanisms to help prevent ''a race to the bottom'' with respect to regulatory controls. First, the process for ascertaining equivalence will be rigorous. Second, after an equivalence determination has been made, Article 18 of the Sectoral Annex for Pharmaceutical GMP's (§ 26.18 of this regulation) and Article 19 of the Sectoral Annex for Medical Devices (§ 26.49 of this regulation) provide that the parties and authorities are to inform and consult one another, as permitted by law, on proposals to introduce new controls or to change existing technical regulations or inspection procedures, and to provide the opportunity to comment on such proposals. Furthermore, the parties must notify each other in writing of any changes to relevant legislation, regulations, and procedures. Third, Article 15 of the MRA and § 26.15 of this regulation provide for monitoring activities for the purpose of maintaining equivalence. Fourth, either side may refrain from ''normally endorsing'' audit reports or device evaluation reports if regulation is

insufficiently strict. Fifth, if FDA believes that the foreign authority has made changes to its control system that lessen the equivalence of that system, FDA has the right to contest the equivalence of that regulatory authority.

Although the MRA and this regulation cannot prevent an exporting country from relaxing its standards, the MRA and this regulation ensure that the importing country must be notified, the equivalence determination of the exporting country can be suspended, and importing countries can take needed actions to protect their citizens.

6. One comment offered support for the proposed rule's recognition that an equivalence assessment must include joint training and joint inspections. This comment emphasized that the MRA and the proposed rule should provide for monitoring and verification of on-going equivalence, including on-going training, on-going joint inspections, and periodic on-going visits.

FDA agrees with this comment. This regulation, as currently drafted, provides for such monitoring and verification in § 26.15 for pharmaceuticals and § 26.69 for medical devices. In the case of medical devices, § 26.69 does not specifically mention training, but also does not exclude it. Joint training exercises are listed in § 26.37 as a confidence building activity during the transition period, and FDA considers monitoring and verification of on-going training to be an essential element of verifying that equivalence continues to exist.

7. One comment stated that the MRA and the proposed rule should provide for periodic expiration of an equivalence determination within 3 to 5 years following the initial determination. FDA should then publish a notice in the **Federal Register** for public comment on whether the equivalence determination has worked and should be renewed. Before renewing the equivalence determination, the United States should verify that the foreign country's or CAB's procedure continues to be equivalent.

FDA agrees that periodic reexamination of a foreign system that has been found equivalent is a prudent practice to ensure that equivalence continues to exist. The agency intends to provide for monitoring of continued equivalence in its implementation of equivalence determinations arrived at under the MRA and this regulation. However, the agency does not believe it necessary to require a ''sunset'' provision for periodic reexamination of equivalence in the MRA or this regulation. FDA will consider how to provide for reexamination of equivalence during implementation of the MRA.

E. ''Piggy back'' Agreements

1. One comment suggested that the MRA and the proposed rule should prohibit the development of what the comment called the ''piggy-back dilemma'' because they would set a precedent for these types of arrangements. The comment described an example of such a ''piggy-back'' arrangement as FDA establishing a mutual recognition agreement with country A, country A then establishing a mutual recognition agreement with country B, and then FDA automatically granting a mutual recognition with country B on the basis of its mutual recognition agreement with country A.

FDA disagrees with the comment's conclusion that the MRA and this regulation would set a precedent for entering into such ''piggy-back'' arrangements. The MRA and this regulation require a determination of equivalence be made by FDA of each EC Member State regulatory authority and each device CAB located in EC Member States before any inspectional or evaluation reports would be ''normally endorsed'' by FDA under certain conditions. There are no provisions in the MRA or this regulation for the ''normal endorsement'' of reports from any countries or CAB's that have not been determined to be equivalent by FDA.

2. One comment strongly opposed what the comment called ''piggy back equivalence'' as described in the proposed rule under § 26.11(b) because it would take away FDA's authority to make its own equivalence determinations and otherwise compromise its ability to ensure public health.

The so-called ''piggy-back'' or ''surrogate'' inspections described in § 26.11(b) provide that FDA may ''normally endorse'' inspection reports resulting from joint inspections by an equivalent authority and a nonequivalent authority of manufacturers located in the nonequivalent authority's territory. Under the provisions of the MRA and this regulation, FDA has the option of participating in all ''surrogate'' inspections and expects to exercise this right as necessary. Furthermore, the MRA and this regulation have other safeguards in place for these types of inspections, and more generally as described previously, that ensure public health protections are maintained.

F. Pharmaceutical issues

1. One comment stated that if FDA has confidence that the EC can regulate drug substances, biologics should also be included in the scope of the document.

Many biological products, such as vaccines and therapeutic drug products, are included in the scope of the MRA and this regulation. Other biological products, specifically human blood, plasma, tissues and organs, were excluded from the scope of the MRA. In order for there to be a finding of equivalence, the parties to the MRA and this regulation must have sufficiently comparable regulatory systems for the products. Not all EC Member States have established regulatory systems for human blood, plasma, tissues, and organs at this time, so it would not be possible to have a finding of equivalence during the transition period for these products. Plasma derivatives were excluded from initial consideration because the U.S. regulation of plasma derivative products has recently undergone intense scrutiny and regulatory change; therefore, the FDA did not believe it appropriate at this time to include plasma derivatives within the scope of the MRA and this regulation.

2. One comment suggested that § 26.1 of the proposed rule be amended to include a definition for the term ''normally endorsed.''

The agency believes that a codified definition of ''normally endorsed'' is not needed because the rule (at § 26.12) exemplifies circumstances in which the reports would not be normally endorsed. However, FDA wishes to clarify that normal endorsement generally means that an authority will accept the information contained in the inspection report to evaluate and determine a manufacturer's compliance with that authority's requirements, and FDA expects to endorse the finding in the reports most of the time. FDA is not, however, prevented from reaching different conclusions in appropriate circumstances.

3. One comment suggested revisions to the definition of GMP's (§ 26.1(c)(1)) to explicitly include packaging, labeling, testing, and quality control.

FDA believes the suggested revisions are unnecessary. Labeling, testing, quality control, and packaging are part of manufacturing. FDA believes that the proposed definition meets the needs of part 26 because it is consistent with FDA's statutes and regulations.

4. One comment said that the proposed definition of ''inspection report'' (§ 26.1(e)) was inconsistent with

the definition of ''inspection'' because it lacked reference to report coverage of commitments made as part of the approval to market a product. The comment suggested added wording to include such commitments.

The agency believes it unnecessary to modify the definition of ''inspection report,'' as suggested, because it should be clear from other sections of the rule (such as §§ 26.2, 26.3, and 26.14), that FDA fully expects that reports covering preapproval inspections of drug manufacturers will, as a matter of course, include information relating to commitments made as part of the marketing approval. In addition, as stated in § 26.8, the agency intends to work quickly with counterpart authorities under the MRA to determine inspection report contents and format.

5. One comment suggested that the proposed rule clarify that it would apply only to inspection of firms that are exporting covered pharmaceutical products from either of the two regions to the other.

The agency believes that the current wording in § 26.3 is sufficiently clear to limit the scope of inspections to only those firms located in the two regions. The rule states in relevant part that the ''provisions of this subpart shall apply to pharmaceutical inspections carried out in the United States and Member States of the European Community* * *.'' Furthermore, § 26.12 refers to inspection reports being normally endorsed by the importing (emphasis added) party. Clearly, the importing party is interested in only inspection reports because of products being imported into its territory.

6. One comment suggested changing the word ''both'' to ''either'' in § 26.4(a) on the grounds that a product regulated as a drug by one party but not the other should not be excluded from this regulation because at least one party will apply current GMP standards to the product.

The agency disagrees with the suggestion. If an importing country regulates an article as a drug, but the exporting country does not, the importing country would likely hold the article to a different (higher) set of manufacturing standards. In such a situation, it is unlikely that the importing country would find the exporting country's inspection report of value in assessing the manufacturer's compliance.

7. One comment objected to the provision in § 26.6(c) that equivalence assessments mandate joint inspections. The comment suggested that they be minimized or replaced by ''accompanied inspections'' where the lead authority is clearly designated.

FDA believes that the conduct of joint inspections is an essential part of the equivalence assessment process. Such assessments would be incomplete without first hand observation of how an authority conducts an inspection. The agency wishes to clarify that, as stated in the rule, the conduct of joint inspections is ''for the purpose of assessing regulatory systems and the authorities' capabilities.'' The actual format of the joint inspections has not yet been determined, and may include inspections where one party observes the other party's inspectional conduct or where each party has responsibility for part of the inspection. As part of the preparation for implementation of the MRA and this regulation, FDA expects to jointly develop with the EC a standard operating procedure for joint inspection that embodies this approach.

8. One comment said the second sentence in § 26.6(a) (stating that the EC will provide information pertaining to criteria under EC competence) was problematic because the equivalence criteria in Appendix D should be complete, as is, or else augmented, as needed.

The agency believes the comment may have misinterpreted the proposed rule to mean the EC will be held to different, yet to be specified, equivalence criteria. The agency wishes to clarify that the equivalence criteria in Appendix D apply equally and fully to both parties. The sentence at issue addresses information (e.g., European Commission Directives) that the EC will provide relating to these criteria that applies to all Member State authorities, versus information that is specific to a particular Member State as to how Member State authorities meet these criteria.

9. One comment said § 26.6(b) should address the mechanism by which the parties establish and communicate their draft equivalence assessment programs. The comment called for interested parties to have the opportunity to comment on the draft programs before they become official. The comment also suggested that the phrase ''as deemed necessary'' would for FDA be in conflict with legislative mandates that require certain pre- and postapproval inspections.

The agency does not believe it is necessary to codify the mechanism by which the parties establish and communicate their draft equivalence assessment programs. The parties have yet to establish those logistics. Regarding the opportunity for public input on such programs, as discussed in section II of this document, the agency intends to provide for such input in a manner consistent with current policy development and FOIA requirements. The agency is fully aware of its legislative mandates regarding establishment inspections and does not believe the wording of the MRA or the rule is inconsistent with those responsibilities. FDA intends to carry out all activities that it deems necessary to be consistent with its responsibilities.

10. One comment suggested adding wording to § 26.8 to state that FDA will use its current inspection report format, or some modification thereof, until the parties develop and agree upon an inspection report format.

The agency believes the suggested wording is unnecessary because it is confident that the parties will develop and agree upon a mutually acceptable report format in a timely manner.

11. One comment suggested that § 26.9(a) be revised to explicitly require FDA to use International Organization for Standardization (ISO) 9000 and ISO 10000 standards to determine that an authority has demonstrated a pattern of consistent performance with the criteria in Appendix D.

The agency believes it is unnecessary to apply precise statistical methods in demonstrating a pattern of consistent performance, in the context of complying with Appendix D. The agency intends to apply objective and fair criteria in evaluating whether an authority has demonstrated a pattern of consistent performance but does not believe its already rigorous GMP and inspection requirements need an added ''layer'' of requirements based upon the ISO standards mentioned.

12. One comment suggested that § 26.11(c) be amended to include a manufacturer's certification that the product was manufactured in accordance with applicable GMP's.

FDA's view is that such a certification is unwarranted. The agency expects that, in the context of this agreement, authorities would rely upon inspectional reports to determine a manufacturer's current GMP compliance rather than relying upon the manufacturer's own declaration. The agency therefore declines to adopt the suggestion.

13. One comment suggested adding a new paragraph, to complement § 26.11(c), that would exempt U.S. manufacturers from carrying out all of the quality controls specified in the current GMP regulations, provided that the controls specified in Article 22 paragraph 1(b) of Council Directive 73/319/EEC have been carried out in the EC and each batch or lot is accompanied by

certificates of current GMP and marketing authorization compliance.

FDA does not believe it is in the public interest to exempt manufacturers from performing currently required current GMP quality control measures, or to allow products to be released for distribution without requisite laboratory determination of conformance to established specifications. The suggested changes are not adopted.

14. One comment suggested revisions to § 26.13 to explicitly require that: (1) Requests for postapproval inspections include the product and the requester's areas of special concern; and (2) when new inspections are needed the authority receiving the request should state the reasons why a new inspection is needed along with the estimated completion date.

The agency does not believe it is necessary to make the suggested modifications. The agency anticipates that, as a matter of course, inspection requests and corresponding communication will identify products, areas of concern, and other relevant information, as needed.

15. One comment suggested revising § 26.14(b) to require the notified authority to advise the requesting authority of approximately when the inspection will be completed, and to require the requesting authority at that point to detail what issues need to be addressed during the inspection.

The agency declines to accept the suggestion because it believes such operational logistics will be performed as a matter of course, and need not be codified.

16. One comment suggested revising § 26.15 to specify that review of reports includes evaluation mechanisms such as tracking trends and problems and to state that review studies be used to focus on needed training and program improvements.

The agency agrees that report evaluation and trending, along with coordination among the authorities to ensure program improvements, have merit. The agency does not, however, believe it is necessary to codify details of how equivalence monitoring will be performed.

17. With regard to § 26.18, one comment asked how changes in current GMP regulations and initiation of new programs, such as the First Party Audit Program (FPAP), would affect the implementation of the MRA and the proposed rule.

The agency advises that, under § 26.18, FDA will inform, consult with, and offer the opportunity for comment by, the other party, as permitted by law, regarding changes in current GMP regulations or inspection procedures. The mechanisms for conducting that collaboration have yet to be developed. Regarding the FPAP, the subject of an FDA public meeting held on June 23, 1998 (see 63 FR 27583, May 19, 1998), the agency advises that this initiative is currently in very early stages of development. However, conceptually, FPAP is intended to gather information from selected human use pharmaceutical manufacturers regarding their quality assurance measures; the information would be submitted to FDA by those firms and could substitute, in some measure, for information the agency would otherwise obtain from its direct inspectional activities. The agency cannot predict how these initiatives will affect the nature and volume of current GMP inspections performed under the MRA and this regulation. However, the agency will consult with the other party, in accordance with the provisions of this rule and the MRA itself.

18. One comment suggested revising § 26.18(b) to establish a 30-day timeframe for the United States to notify the EC of any changes to Appendix B, and a 5-day timeframe where such notification can be made electronically.

The agency intends to promptly notify the EC of changes to Appendix B, and to use electronic means of doing so whenever feasible. However, FDA believes it is unnecessary to codify specific timeframes.

19. One comment suggested revising § 26.19 to add reporting timeframes of 15 days for paper correspondence or 3 days for electronic correspondence.

FDA shares the comment's concern regarding the timeliness of exchanging information relating to quality problems, and intends to implement such exchange in a prompt manner to be arranged in concert with the EC. FDA does not, however, believe it is necessary to codify a specific timeframe.

20. One comment suggested revising § 26.20(a) to establish reporting timeframes of 5 days for paper correspondence or 3 days for electronic communications.

As discussed in response to comments on § 26.19, the agency agrees that reporting needs to be done promptly, but does not agree with the suggestion.

21. One comment asked if, and how, the MRA and the proposed rule will accommodate the collection of regulatory samples during pharmaceutical inspections.

The agency advises that the MRA and this regulation do not specify how regulatory samples collected during establishment inspections will be handled. However, FDA anticipates that both parties will handle such samples as they currently do, and that information about such samples would be contained in the inspection report or related documents. The agency is prepared to work with the regulatory authorities should it become necessary to develop procedures relating to sample collection.

22. One comment noted that a recent U.S. General Accounting Office (GAO) report on FDA's foreign inspection program included recommendations intended to improve management of the agency's overseas inspection program. The comment asked if FDA's consideration of the report would affect the MRA or the proposed rule.

The agency has, in response to the GAO report, already initiated several modifications in the management of its overseas inspection program. The agency does not at this point anticipate that implementation of those changes will have a significant effect on the MRA or this regulation.

23. One comment suggested adding a new paragraph to subpart C, § 26.76 that would explicitly prohibit the parties from obstructing public access to information which, by U.S. law, is disclosable to the public.

The agency does not agree that this section is needed because part 26 does not conflict with U.S. laws regarding public access to information. The agency is fully aware of its legal obligations to abide by those applicable statutes, as discussed in section II of this document.

24. One comment suggested numerous editorial changes to add clarity throughout the rule.

The agency has carefully considered the suggested revisions and believes that although some have merit, on balance, the need to retain wording in part 26 that is as close as possible to the MRA itself outweighs the advantages that the changes might afford.

G. Medical Device Issues

The Food and Drug Administration Modernization Act of 1997 (FDAMA), Pub. L. 105–115, 111 Stat. 2296 (1997), included a number of amendments to the act relevant to the MRA's Sectoral Annex on Medical Devices (Medical Devices Annex). First, an FDA pilot program for third-party review of medical devices (see 61 FR 14789, April 3, 1996) was codified in the act as new section 523 (21 U.S.C. 360m), entitled ''Accredited Persons.'' In the **Federal Register** of May 22, 1998 (63 FR 28392), FDA published a notice of availability of a draft guidance on its third-party

accredited persons program under this new section of the act.

Interested persons should also refer to a related notice of availability published in the **Federal Register** of July 2, 1998 (63 FR 36240), entitled ''Draft Guidance for Staff, Industry and Third Parties, Third Party Programs under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition Between the United States of America and the European Community; Availability'' (MRA). This guidance document is also available in FDA's Home Page on the WWW (''www.fda.gov'').

Second, due to amendments made by FDAMA, FDA has exempted a number of devices from premarket notifications under section 510(k) of the act (21 U.S.C. 360(k)) (see 63 FR 3142, January 21, 1998 (Class II devices), and 63 FR 5387, February 2, 1998 (Class I devices)). On May 20, 1998, FDA made available a list of devices which are eligible for third party review under new section 523 of the act. FDA plans to propose to the European Commission that the tables attached to the Medical Devices Annex to the MRA, listing devices eligible for review during the transitional period of the MRA, be revised to reflect the changes in U.S. requirements made by FDAMA and the FDA implementing actions described previously. The EC may also suggest changes concerning devices eligible for the MRA. These adjustments will be made during the transitional period under the MRA.

Third, as discussed in comment 9 of section II.F of this document, FDA now has explicit authority to recognized voluntary consensus standards for devices due to a FDAMA amendment to section 514 (c) of the act (21 U.S.C. 360d(c)).

1. One comment identified a typographical error in Table 1 of the Sectoral Annex on Medical Devices (Annex) of the proposed rule concerning radiographic screens § 892.1960 (21 CFR 892.1960).

FDA agrees with the comment and in the final rule has corrected this typographical error. Also, several minor typographical errors in the device lists were identified by the European Commission and FDA just prior to the signing of the MRA on May 18, 1998. These corrections are also being made in corresponding provisions in this rule.

2. One comment from a manufacturer questioned whether condoms are covered by the MRA.

The list of devices that FDA made available on May 20, 1998, for eligibility in the accredited persons program under section 523 of the act includes condoms, with and without spermicidal lubricant. Therefore, FDA is willing to consider condoms with or without spermicidal lubricant as eligible for participation in the premarket assessment component of the device MRA, if the EC agrees. Condoms without spermicidal lubricant are listed in Table 3 of the Annex for possible inclusion in the scope of product coverage during the Operational Period. However, condoms with spermicidal lubricants may be regulated by the EC, or certain EC Member States, as pharmaceuticals and hence may be outside the scope of the Medical Devices Annex.

3. One comment asked whether clearance of a 510(k) will be equivalent to CE marking.

Clearance of a 510(k) will not be considered equivalent to the CE marking, nor will CE marking be considered equivalent to a 510(k). Under the MRA and this regulation, the exporting country's CAB's perform specified conformity assessments in accordance with the importing country's requirements. The MRA and this regulation are intended to enable determinations: (1) Whether CAB's in the EC are capable of conducting certain premarket and quality system evaluations in accordance with U.S. regulatory requirements in a manner equivalent to how those evaluations are conducted by FDA (with FDA making the final decision, but with an expectation that FDA would ''normally endorse'' a CAB's assessment), and (2) whether CAB's in the United States are capable of conducting certain premarket and quality system evaluations in accordance with EC regulatory requirements in a manner equivalent to those conducted by European CAB's, also referred to as ''notified bodies.''

4. One comment requested implementation of a system by which U.S. manufacturers can obtain government documents for presentation to the EC.

Appendix A of subpart B contains addresses the relevant legislation, regulations, and procedures for the EC and the United States. In addition, the European Commission has a site on the WWW for direct access to EC documents (''http://Europa.eu.int/eur-lex''). Also, just as European notified bodies are frequently a manufacturer's first point of contact regarding the process for meeting the European requirements, it is expected that, under the MRA and this regulation, U.S.-based CAB's will be able to provide manufacturers with information on EC requirements and copies of necessary European documents needed to meet European requirements.

5. One comment stated that industry would like to encourage observed audits. The comment explained that, in an observed audit, a U.S. manufacturer would allow an EC Notified Body representative to accompany an FDA inspector during an inspection of its plant.

FDA agrees that joint industry audits are necessary to demonstrate that CAB's are competent to assess medical devices to each country's requirements and level of public health protection. FDA encourages manufacturers to support observed audits.

6. One comment suggested that, to further strengthen confidence in CAB's, training on auditing should be conducted by the United States and EC, and industry should be encouraged to participate in FDA's third party system, i.e., the accredited persons program.

FDA agrees with the suggestions. Training on premarket and quality system evaluations is planned for CAB's participating in the MRA and in FDA's third-party accredited persons program. FDA has made tentative plans to conduct training for EC CAB's on October 14 to 16, 1998, in the Washington, DC area. Representatives of EC CAB's interested in participating in the MRA should begin making plans to attend this training, which is also being provided to participants in the accredited persons program. This training is intended to address the scope, content, and expectations of the evaluations sufficient to determine the equivalence of the assessments.

7. One comment requested that FDA consider IV catheters, under 21 CFR 880.5200, for inclusion in Table 2, ''Class II Medical Devices Included in Scope of Product Coverage at Beginning of Transition Period.''

During the negotiation of the Annex, there were no expressions of interest in adding IV catheters to any of the tables of eligible medical devices. FDA is willing to consider that issue in the future, but at this time does not intend to include IV catheters in Table 2 at this time.

8. Several comments suggested that the MRA be expanded to include more devices, including class II devices.

As discussed previously, FDA plans to propose expansion of the list of eligible devices to include all devices eligible for third party review under FDAMA, except those medical devices regulated as in vitro diagnostics. (The EC does not yet have legislation in place on in vitro diagnostics.) The agency is considering specific suggestions by industry comments for inclusion of specific devices. These suggestions are extremely useful for future decisions,

although neither the FDA nor the European Commission can, at this time, respond to these industry suggestions by including additional devices under the MRA. Revision of the list will, however, be a step taken early during the transition stage. The pace at which devices can be added to the device premarket assessment aspect of the MRA depends on the availability of guidance documents or FDA-recognized standards, as discussed in comment 8 of section II.G of this document.

9. Several comments urged FDA to accept international standards, instead of developing FDA guidance documents, for the third party review of class II devices. One comment proposed use of 81 international and regional standards to support premarket evaluations and quality system evaluations.

FDA, under FDAMA, has begun to recognize consensus standards for use in its various medical device activities (see 63 FR 9561, February 25, 1998). FDA very much appreciates the submission identifying potentially useful standards. Communications such as this that relate to the use of standards in MRA implementation and other device activities are being considered in regard to FDA's consensus standards initiative announced on February 25, 1998. FDA plans to update the guidance for the recognition and use of consensus standards, as described in the February 25, 1998, document, and in doing so the agency will take into account the suggestions received and the information and experience to be gained during the implementation of the MRA.

FDA's views on the appropriateness of including a device under the premarket evaluation component of the MRA will depend, in part, on whether FDA-recognized standards or review guidance documents exist to provide a basis for product evaluation. Recognized standards or review guidance do not currently exist for many of the additional devices suggested for inclusion in the MRA by certain industry comments. FDA plans to develop guidance documents only where recognized consensus standards fail to address sufficiently the requirements for demonstrating substantial equivalence or other U.S. requirements.

10. One comment suggested that FDA take aggressive steps to identify and designate third party review organizations.

FDA is proceeding in a timely and transparent manner to describe processes and expectations for third parties to participate in both the accredited persons program and the MRA. For example, the agency, in the **Federal Register** of July 2, 1998 (63 FR 36240), issued a comprehensive guidance document entitled ''Draft Guidance for Staff, Industry and Third Parties, Third Party Programs Under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition Between the United States of America and the European Community (MRA),'' to assist interested parties to understand the designation process for CAB's and to prepare their applications. This document has been made available on the CDRH Home Page on the WWW. FDA officials also have discussed the third party programs under FDAMA and the MRA at trade shows and public meetings.

11. Two comments suggested that both quality system evaluation reports and premarket evaluation reports should be harmonized between the United States and EC. Another comment stated that one of the issues to be resolved is determining what duration of an audit is satisfactory to the designating authorities as well as the scope, content, and degree of rigor expected from such audits. One comment further suggested incorporating efforts by an international harmonization group known as the GHTF and its Study Groups I and IV in developing the format for reports. FDA officials, European government officials, and industry representatives are among those active in the GHTF, which is comprised of government and industry representatives from North America, Europe, Asia, and Australia, as well as observers from other countries and international organizations (see International Harmonization, Policy on Standards, in the **Federal Register** of October 11, 1995 (60 FR 53081)).

The comment also suggested that, in the interest of efficiency and to minimize translation costs, such reports should be in an abbreviated form in most circumstances. It further suggested that the reporting forms be limited to certification by the CAB that applicable requirements of the other party's regulations are met and that this certification may reference those documents which were examined to demonstrate compliance. The comment also recommended use of FDA's initiative known as the ''510(k) Paradigm'' that offers other ways of streamlining decisions on 510(k)'s.

FDA expects to use relevant GHTF documents, as appropriate, in implementing the MRA. Study Group I of GHTF is developing a universal format which provides guidance on technical documentation with a view to first identifying similarities and divergences among various regulatory systems and then striving to achieve, to the extent possible, harmonization of requirements. At this time, this study group has reviewed requirements of existing systems and is now developing the essential principles which could facilitate harmonization of requirements, particularly as to premarket submissions. FDA is hopeful that it will be able to use guidance developed by Study Group I as guidance to MRA participants on the development of premarket evaluation reports.

Study Group IV of GHTF is preparing guidelines for auditing quality systems of medical device manufacturers. These GHTF guidelines are now being made available for comments by principal participants in GHTF, e.g., by the EC United Kingdoms' Medical Devices Agency's Home Page and the United States through a future publication as a guidance in the **Federal Register** and in the FDA Home Page. FDA anticipates using audit guidance developed by Study Group IV in the implementation of the MRA.

It is too soon to say precisely what formats will be used for premarket evaluation reports and quality system evaluation reports under the MRA. FDA intends to take into account the concerns expressed in the comment about minimizing the required documentation to that which is necessary. The formats for such reports will be developed during the MRA transition period, and FDA expects guidance from the GHTF study groups to be extremely helpful in this respect. During format development, FDA will work to develop formats that will not be unduly burdensome, so that forms and reports will include information sufficient for the parties to determine if normal endorsement is warranted. FDA will consider the use by third parties of FDA streamlining initiatives such as the 510(k) Paradigm in review of applications under the accredited persons program and the MRA. Information on the 510(k) paradigm can be accessed on the CDRH Home Page under ''Re-engineering Efforts'' (www.fda.gov/cdrh).

12. Two comments raised the concern that the exchange of post market vigilance reports might create an administrative burden for industry if reports are not kept simple. One of the comments noted that industry has wanted to avoid multiple reporting and wishes to report only when there is a real and imminent danger to public health.

FDA believes that adverse event reports need to be clear, concise, and

addressed to public health needs. FDA, through its participation in the GHTF Study Group II, is working toward a streamlined and harmonized system of reporting adverse events that are required by EC and U.S. laws and regulations. This effort is initially focused on harmonizing the guidelines for the types of adverse events that medical device manufacturers need to report. This guidance will make it easier for a manufacturer to decide which events need to be reported to the appropriate bodies in the EC and in the United States. The guidance developed by Study Group II will also be used to institute a mechanism for sharing adverse event data between the EC and United States under the MRA.

13. Two comments expressed support for § 26.48, ''Harmonization,'' and one suggested that FDA should continue to participate in the efforts of the GHTF.

FDA agrees with this comment and intends to continue to participate in these efforts, as resources allow.

14. One comment suggested that the FDA consider provisions by which U.S. CAB's would perform domestic inspections under the act.

This comment addresses issues outside of the scope of the MRA and of this rulemaking. Under the MRA and this regulation, U.S. CAB's will be designated only to conduct product type-examination and verification and/or quality system evaluations for products produced for export to the EC.

15. One comment asked if the ''post market vigilance reports'' addressed under § 26.33(a)(3) were the same as Medical Device Reports (MDR's).

Post market vigilance reports and MDR's are similar mechanisms for reporting adverse incidents in the EC and the United States respectively. A system will be set up during the transition period and maintained thereafter by which the parties will notify each other when there is an immediate danger to public health. (See § 26.50.) As part of the alert system, each party shall notify the other party of any confirmed problem reports, corrective actions, or recalls. The United States and EC plan to develop the data elements of such reports during the transition period, making use of draft documents already being prepared by the GHTF's Study Group II.

16. One comment asked if the regulatory authorities mentioned in § 26.34 and the designating authorities mentioned in § 26.65 are the same.

''Regulatory Authority'' is defined in § 26.60(a)(3) and ''Designating Authority'' is defined in § 26.60(a)(1) of the final rule. It is possible for these authorities to be different, or they may be the same. For the purpose of the Sectoral Annex on Medical Devices, regulatory authorities have the responsibility to implement the provisions of the Annex, including the designation and monitoring of CAB's.

17. One comment asked if the criteria to be used by FDA to determine technical competence for product reviews is identical to that which is to be used in the U.S. third party program for accredited persons.

The technical competence, qualifications, and freedom from conflict of interest for the product review (510(k)) part of the MRA are essentially the same as those being applied in FDA's third-party program for accredited persons. However, the MRA also includes quality systems audits, and CAB's performing quality systems audits under the MRA will need to have the additional training, expertise, and experience to perform quality systems audits. In this respect, the MRA is broader than the FDA third party accredited persons program.

18. One comment supported § 26.31, which states that the Sectoral Annex on Medical Devices should evolve and that the parties will periodically review the program to assess progress and identify enhancements. This comment also requested that timeframes be established for specific actions during the transition period. The comment also recommended that the regulatory authorities establish a schedule for the execution of the specified confidence building activities, under § 26.35, that can serve to ''benchmark'' progress.

FDA finds these comments extremely useful. Specific confidence building activities will depend on the nature of product evaluation and the extent of CAB utilization, and available resources. A process for scheduling confidence building activities and the schedule for accomplishing them will be developed by the United States and EC.

19. One comment stressed the importance of defining the supporting evidence necessary to demonstrate the technical competence and independence of CAB's. This comment also requested that FDA make known to the general public the date and process by which the CAB's will be designated.

FDA issued a **Federal Register** of July 2, 1998 (63 FR 36240) announcing the availability of a draft guidance entitled ''Draft Guidance for Staff, Industry, and Third Parties, Third Party Programs Under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition between the United States of America and the European Community (MRA).'' This draft guidance addresses the criteria and qualifications expected to demonstrate technical competence and independence of CAB's. In addition, the draft guidance outlines the process for designation of CAB's under the Medical Devices Annex to the MRA. FDA will keep the public informed through the home page on the WWW of events under the MRA, such as designation of CAB's.

20. One comment expressed concern that FDA stated that the operational period will start at the end of the transition period, and that FDA did not state that the transition period will be for a period of 3 years. The comment sought clarification.

FDA disagrees that further clarification is needed. The duration of the Transition Period is 3 years. This is clearly stated in § 26.35 and in the Annex, Article 5.

21. One comment supported the process of the importing party's regulatory authority routinely accepting or ''normally endorsing'' reports.

FDA observes that this was the criterion agreed to in the Annex and stated in the regulation (§ 26.41(d), Exchange and endorsement of quality system reports, and § 26.42(c), Exchange and endorsement of product evaluation reports).

22. One comment sought clarification of the term ''normally endorse'' and expected that the importing party will endorse the vast majority of quality system evaluation and premarket evaluation reports.

FDA anticipates that, once CAB's are designated, the importing party (FDA, in the case of devices to be imported into the United States) it is likely to endorse most reports. Sections 26.41(d) and 26.42(c) describe the expectation that reports will normally be endorsed by the authority of the importing party, except under circumstances delineated in those provisions.

23. One comment supported the need to continue to accept the results of conformity assessment procedures performed by a CAB prior to its suspension as a listed body, except in specified situations as identified in § 26.67(f).

FDA agrees with the comment's description of the Annex and the regulation but would also point out the provisions in the framework agreement and in § 26.74 of this regulation allowing authorities on either side to take appropriate and immediate measures to protect public health.

24. One comment expressed concern that the conformity assessment procedures performed by a CAB prior to

withdrawal remain valid subsequent to withdrawal.

FDA notes that § 26.68, ''Withdrawal of Listed Conformity Assessment Bodies,'' clearly delineates the circumstances under which a party is no longer required to accept or recognize results of conformity assessment procedures performed by CAB's (or, in the case of this Annex, to no long normally endorse reports provided by CAB's). As noted in the response in the preceding comment, however, nothing in the MRA or this regulation supersedes a participating country's ability to preclude shipments of products that present a concern under its laws. Whether there will be ''normal endorsement'' of assessments done by a CAB before its suspension or withdrawal would be determined, on the merits, based on the facts in the particular case (see, also, the discussion in comment 13 in section II.A of this document under the heading ''General Comments and Issues'')

25. One comment suggested a definition section for subpart B.

FDA does not believe that it is necessary to change the regulation to add a definition section. Guidance may be provided in the future, if necessary.

26. One comment expected the list of CAB's would be published along with the final rule, or that the final rule would state when the list will be published.

At this time, FDA is not certain of the date when the designation of CAB's will be made under the MRA. Once this occurs, however, the list will be made public on the FDA Home Page on the WWW.

27. One comment requested availability of a description of the information which must be presented in quality system and premarket evaluation reports to be produced by CAB's. The comment suggested that this information is needed in order to judge the adequacy of the work of various CAB's.

FDA agrees. The information that FDA expects to be present in quality system and product evaluation reports will be made public through the FDA Home Page on the WWW during the transition period. Comment 4 of the section II.F of this document describes how to obtain EC documents.

28. One comment commented on the 90-day period provided for obtaining an inspection and requested provision for extension of this period for good cause.

FDA realizes that the CAB's may not be able to accommodate all inspection requests within 60 or 90 days. Time extensions may be needed, for good cause, but FDA believes procedures for such a request need not be codified in this section.

29. One comment strongly recommended that FDA conduct an on-going verification of the evaluation reports produced by the CAB's because they are vital to ensuring the safety and effectiveness of medical devices. This comment also raised concerns about the potential for conflicts of interest in a system of private review. (Some EC CAB's are private sector bodies.)

FDA is sensitive to the concerns raised in this comment and recognizes the importance of adequate reports from CAB's regarding product evaluations and quality system evaluations as well as FDA's verifications. It is anticipated that FDA will rigorously evaluate both the reports and the CAB's that produce them. In addition, FDA has issued a notice announcing the availability of a draft guidance entitled ''Draft Guidance for Staff, Industry, and Third Parties, Third Party Programs Under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition between the United States of America and the European Community (MRA),'' published in the **Federal Register** of July 2, 1998 (63 FR 36240). This document addresses conflict of interest concerns as well as technical competence criteria.

Also, it should be kept in mind that final decisions on 510(k)'s will be made by FDA, ''normally endorsing'' submissions by CAB's, during both the transitional stage and the operational stage of the Medical Devices Annex.

33. One comment suggested that the wording of §§ 26.39(b) and 26.46(b) be clarified. These sections address equivalence and listing of CAB's.

FDA believes the wording of these sections is sufficiently clear. Further clarification, if necessary, could be considered in the future after experience is gained under these provisions.

34. One comment stated that CAB's should be designated within the first 2 years of the transition period because sufficient accumulation of evidence supporting equivalence would be unlikely if designation occurred in the last year of the transition period.

FDA points out that Article 6 of the Annex and § 26.36 of this regulation states that ''each Party shall designate [CAB's] to participate in confidence-building activities by transmitting to the other Party a list of CAB's* * *.'' This transmission will be done at the start of the transition period. However, determinations of equivalence will be made following this exchange of lists and, indeed, will be a continuous feature of MRA implementation.

35. One comment suggested that § 26.37 be revised to include the frequency of workshops and seminars throughout the transitional and operational phases.

FDA agrees that workshops and seminars are important. However, provisions for the frequency of workshops and seminars are not appropriate for inclusion in a rule. Furthermore, available resources will determine the frequency of joint training and seminars. FDA will continue to explore cost effective means, such as audio/video conferences and videotape training, to enhance the expertise of the CAB representatives. As stated earlier, an FDA training program for EC CAB's has been tentatively scheduled for October 14 to 16, 1998, in the Washington, DC area.

36. One comment said that § 26.46(c) implies that the designation of additional CAB's in the operational phase will occur only once each year. This comment went on to suggest that, if expansion of the CAB list is expected to be an annual event, then § 26.66(b) should so state.

FDA believes the language in § 26.46(b) is sufficiently clear, and that there is no need for change in the regulatory provisions cited.

37. One comment suggested that § 26.65 be revised to state that, ''Designating authorities shall only designate CAB's where the primary place of business is in the territory of the designating authority.''

FDA disagrees with the suggestion, as it would introduce an unwarranted restriction into FDA's implementation of the MRA and this regulation. In any case, even if FDA were to adopt the comment's suggestion, the intended purpose of the suggested change could easily be overcome if a U.S. division of a foreign CAB simply formed a new corporation, under the law of a U.S. State, with the United States as the principal place of business.

38. One comment noted that medical devices principally regulated by FDA's Center for Biologics Evaluation and Research (CBER) appear to have been excluded from the MRA.

The comment is correct in noting that no CBER-regulated devices are included in the lists appended to the Sectoral Annex on Medical Devices. CBER has the lead responsibility for 510(k) review for 23 medical device classifications. Adding some of these devices to the list of devices that FDA wishes to make eligible for review under the Annex, at this time, would require establishment of special handling procedures, training, and monitoring within CBER without the expectation of a meaningful number

of third party reviews. However, devices regulated by CBER under the device premarket notification provisions of the act (21 CFR 360(k)) might be considered for eligibility in the MRA program as experience and confidence develops.

39. A comment addressed issues of grammar and format and did not deal with substantive matters relevant to the MRA that would have any bearing on its content, issues, or outcome.

FDA declines to alter the text of the proposed rule in response to this comment. Throughout this rulemaking process FDA has attempted to adhere to the language contained in the MRA unless serious substantive matters were identified having bearing on the content, issues, or outcome of the MRA or this regulation. The nonsubstantive issues raised by this comment do not justify any amendments to this regulation.

III. Summary of Changes

1. In response to a comment, the title of the proposed regulation has been changed to the following: ''Part 26—Mutual Recognition of Pharmaceutical Good Manufacturing Practice Reports, Medical Device Quality System Audit Reports, and Certain Medical Device Product Evaluation Reports: the United States and the European Community.''

2. On its own initiative, FDA has determined that the language of proposed § 26.0 should be amended to provide additional and more precise explanation about the applicability of this regulation with regard to other U.S. agencies and the EC. Therefore, proposed § 26.0 has been amended to read as follows:

Section 26.0 General.

This part substantially reflects relevant provisions of the framework agreement and its sectoral annexes on pharmaceutical good manufacturing practices (GMP's) and medical devices entitled ''Agreement on Mutual Recognition Between the United States of America and the European Community'' (the MRA), signed in London on May 18, 1998. For codification purposes, certain provisions of the MRA have been modified for use in this part. This modification is done for purposes of clarity only and shall not affect the text of the MRA concluded between the United States and the European Community (EC), or the rights and obligations of the United States or the EC under that agreement. Whereas the parties to the MRA are the United States and the European Community (EC), this part is relevant only to the Food and Drug Administration's (FDA's) implementation of the MRA, including the sectoral annexes reflected in subparts A and B of this part. This part does not govern implementation of the MRA by the EC, which will implement the MRA in accordance with its internal procedures, nor does this part address implementation of the MRA by other concerned U.S. Federal agencies. For purposes of this part, the terms ''party'' or ''parties,'' where relevant to FDA's implementation of the MRA, should be considered as referring to FDA only. If the parties to the MRA subsequently amend or terminate the MRA, FDA will modify this part accordingly, using appropriate administrative procedures.

3. On its own initiative FDA has amended several sections of the proposed rule to more accurately describe the relationship between the provisions of this part and the provisions of the MRA. Specifically, §§ 26.6(d), 26.61, 26.73, 26.78, 26.79, and 26.81(d) have been appropriately changed to accomplish this purpose.

4. In response to one comment, Table 1 of the proposed rule concerning the product code for radiographic screens, § 892.1960, is amended in the final rule to reflect the correction of a typographical error: ''WAM'' is changed to read ''EAM.''

5. Other typographical errors and nonsubstantive changes in the MRA have been identified by FDA and the EC since the FDA proposed rule was published on April 10, 1998. Because FDA has endeavored to have this regulation reflect the text of the MRA as accurately as possible, the final rule has been amended to reflect all of these nonsubstantive changes. For example, in § 26.4, the reference is now ''European Community (EC), rather than ''European Union'' or ''EU,'' in accordance with the preference of the EC. The EC is the correct entity, as the EU is not a juridical entity.

6. The agency has amended the authority citation to refer to U.S. statutes on confidentiality (5 U.S.C. 552, 18 U.S.C. 1905, and 21 U.S.C. 331) as well as the new accredited persons provisions of the act (section 523, 21 U.S.C. 360m) added by FDAMA.

7. Under Appendix E of Subpart A (Elements to be Considered in Developing a Two-Way Alert System), for administrative reasons the contact points for FDA are changed from ''FDA's Division of Emergency and Investigational Operations'' to the following:

Biologics: Director, Office of Compliance and Biologics Quality (HFM–600), 1401 Rockville Pike, Rockville, MD 20852, phone: 301–827–6190, fax: 301–594–1944.

Human Drugs: Director, Office of Compliance (HFD–300), MPN I, 7520 Standish Pl., Rockville, MD 20855–2737, phone: 301–594–0054, fax: 301–594–2114.

Veterinary Drugs: Director, Office of Surveillance and Compliance (HFV–200), MPN II, 7500 Standish Pl., Rockville, MD 20855–2773, phone: 301–827–6644, fax: 301–594–1807.

8. Under § 26.1(c), the definition of Good Manufacturing Practices (GMP's) has been changed from the following:

(c) *Good Manufacturing Practices* (GMP's): [These GMP conceptual definitions are to be merged by the parties at a future date.]

(1) GMP's mean the requirements found in the respective legislations, regulations, and administrative provisions for methods to be used in, and the facilities or controls to be used for, the manufacturing, processing, packing, and/or holding of a drug to assure that such drug meets the requirements as to safety, and has the identity and strength, and meets the quality and purity characteristics that it purports or is represented to possess.

(2) GMP's are that part of quality assurance which ensures that products are consistently produced and controlled to quality standards. For the purpose of this subpart, GMP's include, therefore, the system whereby the manufacturer receives the specifications of the product and/or process from the marketing authorization/product authorization or license holder or applicant and ensures the product is made in compliance with its specifications (qualified person certification in the European Community (EC)).

to the following:

(c) *Good Manufacturing Practices* (GMP's): [The United States has clarified its interpretation that under the MRA, that only paragraph (c)(1) of this section has to be understood as the U.S. definition and paragraph (c)(2) as the EC definition.]

(1) GMP's mean the requirements found in the legislations, regulations, and administrative provisions for methods to be used in, and the facilities or controls to be used for, the manufacturing, processing, packing, and/or holding of a drug to assure that such drug meets the requirements as to safety, and has the identity and strength, and meets the quality and purity characteristics that it purports or is represented to possess.

(2) GMP's are that part of quality assurance which ensures that products are consistently produced and controlled to quality standards. For the purpose of this subpart, GMP's include, therefore, the system whereby the manufacturer receives the specifications of the product and/or process from the marketing authorization/product authorization or license holder or applicant and ensures the product is made in compliance with its specifications (qualified person certification in the EC).

The previous changes reflect discussions between FDA and European Commission officials. As a result of those discussions, the United States has clarified its interpretation that the first paragraph of Article 1(3) of the Sectoral Annex for Pharmaceutical GMP's, has to be understood as the U.S. definition and the second as the EC definition. The agency believes that these changes are appropriate because they clarify that the applicable definition under the MRA

will be consistent with the act and regulations (see, e.g., section 501(a)(2)(B) of the act; 21 U.S.C. 351(a)(2)(B)). Furthermore, the Sectoral Annex on Pharmaceutical GMP's, including its core concept of ''equivalence,'' does not require either party to change its definition or application of GMP's.

9. Changes have been made to the list of regulatory authorities contained in Appendix B of Subpart A (List of Authorities) as a result of the legal review carried out in the EC prior to finalizing the MRA. The European Commission amended its list of regulatory authorities contained in Appendix 2 of the Pharmaceutical GMP Annex of the MRA because the changes more correctly reflect the allocation of administrative competencies in the EC and its Member States and do not alter the activities to be carried out under the MRA.

10. Changes have been made to Table 2. of Appendix B of Subpart B of the rule. That table listed 42 class II medical devices to be included within the scope of product coverage at the beginning of the transition period. Four of the devices that were on the list cannot be reviewed by conformity assessment bodies under the MRA and this rule, because of a statutory prohibition in the act. Accordingly, the agreement will be brought into force without application to those four devices. Section 523 of the act prohibits ''accredited persons'' from performing review of a class II device that is intended to be permanently implantable, life sustaining, or life supporting, and review of such devices must be performed by FDA. This provision was recently added to the act by FDAMA. The agency recently determined that the following four devices are within the scope of the prohibition and have been removed from Table 2: AN 868.5925, powered emergency ventilator; OR 888.3020, intramedullary fixation rod; OR 888.3030, single/multiple component metallic bone fixation appliances and accessories; and OR 888.3040, smooth or threaded metallic bone fixation fastener. The United States has informed the EC of this situation and of the need to make appropriate amendments to the MRA promptly after its entry into force.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, under the Regulatory Flexibility Act (Pub. L. 96–354, as amended by Pub. L. 104–121), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all 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, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on a substantial number of small entities. The Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before enacting any rule that may result in an expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any 1 year.

The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order and in these two statutes. Through this regulation, the agency sets out requirements through which it may normally endorse certain conformity assessment procedure reports. Such reports would be provided by equivalent EC Member State regulatory authorities for manufacturing site inspections to ascertain conformity with pharmaceutical GMP's and by equivalent CAB's for quality system audits and certain medical device premarket evaluations. Obtaining conformity assessment information in the manner described in the final rule is more efficient and cost-effective than the existing approach, where additional inspection efforts by FDA in foreign countries are necessary because foreign regulatory systems have not been found equivalent. The primary benefit of the final rule is to provide credible assurance that the increasing volume of EC Member States' imports into the United States meet pharmaceutical GMP requirements, and medical device quality system evaluation and certain premarket evaluation requirements, as specified in U.S. statutes and regulations. In the future, this credible assurance must be achievable with FDA resource expenditures that rise less than proportionately to the volume of trade.

In recent years, the credibility of the current approach has been strained as FDA's essentially constant foreign inspection capacity has been stretched over an expanding volume of imports from the EC. In the 3-year interval between 1994 and 1997, the value of EC pharmaceutical and medical device imports into the United States has nearly doubled from $5.5 billion to more than $10.7 billion. Growth has been greatest in pharmaceuticals, where annual EC exports have increased by more than $2 billion in each of the last 2 years. In 1997, FDA conducted one inspection in the EC for every $60 million in pharmaceutical exports to the United States, which is less than half the coverage intensity of 1994. In addition, the majority of these inspections have been preapproval in nature. Continuation of the current trend would further decrease FDA's coverage intensity to less than one inspection per $100 million in EC pharmaceutical exports by the year 2000. Equivalence with EC Member State regulatory systems would leverage FDA's regulatory resources so that necessary conformity assessments can be ensured despite higher volumes of future trade.

In addition to helping FDA cope with higher trade volumes, mutual recognition or equivalence-based agreements with exporting nations may permit FDA to redirect some of its inspectional resources to risk priorities not covered by such agreements. This flexibility would provide a more responsive level of U.S. consumer protection in the face of a changing global marketplace with inherently variable risk management priorities.

Another important benefit of the final rule would be the cost savings realized by the regulated industry, largely as a result of the sharing of inspection reports among equivalent regulatory authorities. This exchange, in turn, will minimize the need for duplicative inspections and permit individual firms to undergo fewer inspections of manufacturing sites. FDA does not have data on the average administrative cost incurred by manufacturers of pharmaceuticals (including biologicals) or medical devices as they participate in regulatory inspections, but it is likely that the avoidance of redundant inspections would generate cost savings. The final rule also may shorten product review times for regulated products as a result of the increased efficiency of premarket approval inspection activities and the third-party evaluation of certain medical devices. Quantification of these savings will be highly dependent on the specific countries that achieve equivalence and on the number of medical device audits and evaluations performed by CAB's under the MRA.

The costs of this regulation will have a greater impact on governmental regulatory agencies than on the regulated industry. These governmental costs involve both startup and operational components. FDA has not received additional government funding earmarked for achieving mutual

recognition agreements and, therefore, must proceed to implement these agreements as a concurrent function within normal day-to-day regulatory activities. The 3-year transition period reflects the necessity to absorb these startup costs within existing regulatory budgets. Some activities such as joint inspections may be reasonably easy to absorb as concurrent functions that do not require additional funding, while others such as developing and maintaining systems for routine information exchange may involve new activities. These absorbed governmental costs will fall heavily on FDA, as it must assess equivalence of multiple EC Member States and notified bodies.

For FDA, the absorption of these startup costs will be easier with respect to those EC Member States with which the United States already has a large volume of trade in the products in question, where FDA already conducts enough inspections to have gathered a general understanding of the requirements and regulatory practices of the exporting country. From this perspective, the pace and priorities for mutual recognition agreements during the transition period will be affected by FDA's ability to conduct these processes as concurrent functions within current activities.

In the longer run, an operational system of mutual recognition agreements could pose additional costs or problems for regulatory authorities of exporting countries if equivalence requires a frequency, focus or content of inspections not presently included in regulatory requirements of the exporting nation. For example, Country A may not be able to provide the frequency of medical device inspections desired by Country B without conducting inspections beyond those required for Country A's domestic inspection strategy. Conversely, Country B may not be able to provide to Country A adequate details of the quality of pharmaceutical source materials, because Country B does not have inspectional authority over pharmaceutical starting materials. To the extent that such costs or problems are insignificant or offset by other savings, they will not be obstacles to reaching agreement on equivalence.

This rule is not expected to involve any new incremental costs to the affected industries. Although joint inspections during the transition period may create the appearance of more regulatory effort, they would not impose additional costs on the firms inspected. FDA does not anticipate an increase in the total number of EC inspections, and in fact, the coverage intensity of FDA inspections in the EC would be expected to continue to fall during the transition period, as it has for the past several years. Other activities related to equivalence determinations, such as the procedures for exchanging information and reports, focus on the interface and coordination among regulatory agencies and, as such, will not affect industry in a cost context.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities unless the rule is not expected to have a significant economic impact on a substantial number of small entities. As this final regulation is not expected to impose costs on the regulated industry, and FDA has received no comments that would indicate otherwise, the agency certifies that this rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The Unfunded Mandates Act of 1995 requires that agencies prepare an assessment of the anticipated costs and benefits before issuing any final rule that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. This rule does not impose any mandates on State, local or tribal governments, or the private sector that would result in an annual expenditure of $100 million or more. Therefore, no further analysis is appropriate for this requirement.

V. Paperwork Reduction Act of 1995

This final rule does not contain any information collection provisions that would be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

VI. References

1. The 1992 ''Report of the Task Force on International Harmonization'' is available from the National Technical Information Service, Vienna, VA; Order # PB93128155.

2. FDA's Compliance Policy Guides ''Sec. 100.900, International Memoranda of Understanding (CPG 7150.19)'' is available from the National Technical Information Service, Vienna, VA 22161 (Order # PB 96–915499INZ) or can be found on FDA's website at the following location: ''www.fda.gov/ora/compliance_ref/cpg/cpgch1.htm#sec.100.900''.

3. The 1997 ''Summary Report of the Foreign Inspection Working Group'' is available from the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

VII. Comparison Table

The following table shows the relationship of the MRA Articles and the sections of the Code of Federal Regulations (CFR) under this rule:

TABLE 1.— RELATIONSHIP OF THE MRA ARTICLES TO SECTIONS IN THE CFR

MRA Article	CFR Section
Sectoral Annex for Pharmaceutical GMP's	Subpart A
Article 1	26.1
Article 2	26.2
Article 3	26.3
Article 4	26.4
Article 5	26.5
Article 6	26.6
Article 7	26.7
Article 8	26.8
Article 9	26.9
Article 10	26.10
Article 11	26.11
Article 12	26.12
Article 13	26.13
Article 14	26.14
Article 15	26.15

TABLE 1.— RELATIONSHIP OF THE MRA ARTICLES TO SECTIONS IN THE CFR—Continued

MRA Article	CFR Section
Sectoral Annex for Pharmaceutical GMP's	Subpart A
Article 16	26.16
Article 17	26.17
Article 18	26.18
Article 19	26.19
Article 20	26.20
Article 21	26.21
Appendix 1	Appendix A
Appendix 2	Appendix B
Appendix 3	Appendix C
Appendix 4	Appendix D
Appendix 5	Appendix E

MRA Article	CFR Section
Sectoral Annex on Medical Devices	Subpart B
Article 1	26.31
Article 2	26.32
Article 3	26.33
Article 4	26.34
Article 5	26.35
Article 6	26.36
Article 7	26.37
Article 8	26.38
Article 9	26.39
Article 10	26.40
Article 11	26.41
Article 12	26.42
Article 13	26.43
Article 14	26.44
Article 15	26.45
Article 16	26.46
Article 17	26.47
Article 18	26.48
Article 19	26.49
Article 20	26.50
Appendix 1	Appendix A
Appendix 2 and Tables 1–3	Appendix B and Tables 1–3
Appendix 3 [Reserved]	Appendix C [Reserved]
Appendix 4 [Reserved]	Appendix D [Reserved]
Appendix 5 [Reserved]	Appendix E [Reserved]
Appendix 6 [Reserved]	Appendix F [Reserved]

MRA Article	CFR Section
Framework Agreement	Subpart C
Article 1	26.60
Article 2	26.61
Article 3	26.62
Article 4	26.63
Article 5	26.64
Article 6	26.65
Article 7	26.66
Article 8	26.67
Article 9	26.68
Article 10	26.69
Article 11	26.70
Article 12	26.71
Article 13	26.72
Article 14	26.73
Article 15	26.74
Article 16	26.75
Article 17	26.76
Article 18	26.77

MRA Article	CFR Section
Framework Agreement	Subpart C
Article 19	26.78
Article 20	26.79
Article 21	26.80
Article 22	26.81

List of Subjects in 21 CFR Part 26

Animal and human drugs, Biologicals, Devices, Exports, Imports, Incorporation by reference, and Inspections.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended by adding part 26 to read as follows:

PART 26—MUTUAL RECOGNITION OF PHARMACEUTICAL GOOD MANUFACTURING PRACTICE REPORTS, MEDICAL DEVICE QUALITY SYSTEM AUDIT REPORTS, AND CERTAIN MEDICAL DEVICE PRODUCT EVALUATION REPORTS: UNITED STATES AND THE EUROPEAN COMMUNITY

Sec.

Authority: 5 U.S.C. 552; 15 U.S.C. 1453, 1454, 1455; 18 U.S.C. 1905; 21 U.S.C. 321, 331, 351, 352, 355, 360, 360b, 360c, 360d, 360e, 360f, 360g, 360h, 360i, 360j, 360l, 360m, 371, 374, 381, 382, 383, 393; 42 U.S.C. 216, 241, 242l, 262, 264, 265.

§ 26.0 General.

This part substantially reflects relevant provisions of the framework agreement and its sectoral annexes on pharmaceutical good manufacturing practices (GMP's) and medical devices of the ''Agreement on Mutual Recognition Between the United States of America and the European Community'' (the MRA), signed at London May 18, 1998. For codification purposes, certain provisions of the MRA have been modified for use in this part. This modification is done for purposes of clarity only and shall not affect the text of the MRA concluded between the United States and the European Community (EC), or the rights and obligations of the United States or the EC under that agreement. Whereas the parties to the MRA are the United States and EC, this part is relevant only to the Food and Drug Administration's (FDA's) implementation of the MRA, including the sectoral annexes reflected in subparts A and B of this part. This part does not govern implementation of the MRA by the EC, which will implement the MRA in accordance with its internal procedures, nor does this part address implementation of the MRA by other concerned U.S. Federal agencies. For purposes of this part, the terms ''party'' or ''parties,'' where relevant to FDA's implementation of the MRA, should be considered as referring to FDA only. If the parties to the MRA subsequently amend or terminate the MRA, FDA will modify this part accordingly, using appropriate administrative procedures.

Subpart A—Specific Sector Provisions for Pharmaceutical Good Manufacturing Practices

§ 26.1 Definitions.

(a) *Enforcement* means action taken by an authority to protect the public from products of suspect quality, safety, and effectiveness or to assure that products are manufactured in compliance with appropriate laws, regulations, standards, and commitments made as part of the approval to market a product.

(b) *Equivalence* of the regulatory systems means that the systems are sufficiently comparable to assure that the process of inspection and the ensuing inspection reports will provide adequate information to determine whether respective statutory and regulatory requirements of the authorities have been fulfilled. Equivalence does not require that the respective regulatory systems have identical procedures.

(c) *Good Manufacturing Practices* (GMP's). [The United States has clarified its interpretation that under the MRA, that only paragraph (c)(1) of this section has to be understood as the U.S. definition and paragraph (c)(2) as the EC definition.]

(1) GMP's mean the requirements found in the legislations, regulations, and administrative provisions for methods to be used in, and the facilities or controls to be used for, the manufacturing, processing, packing, and/or holding of a drug to assure that such drug meets the requirements as to safety, and has the identity and strength, and meets the quality and purity characteristics that it purports or is represented to possess.

(2) GMP's are that part of quality assurance which ensures that products are consistently produced and controlled to quality standards. For the purpose of this subpart, GMP's include, therefore, the system whereby the manufacturer receives the specifications of the product and/or process from the marketing authorization/product authorization or license holder or applicant and ensures the product is made in compliance with its specifications (qualified person certification in the EC).

(d) *Inspection* means an onsite evaluation of a manufacturing facility to determine whether such manufacturing facility is operating in compliance with GMP's and/or commitments made as part of the approval to market a product.

(e) *Inspection report* means the written observations and GMP's compliance assessment completed by an authority listed in Appendix B of this subpart.

(f) *Regulatory system* means the body of legal requirements for GMP's, inspections, and enforcements that ensure public health protection and legal authority to assure adherence to these requirements.

§ 26.2 Purpose.

The provisions of this subpart govern the exchange between the parties and normal endorsement by the receiving regulatory authority of official good manufacturing practices (GMP's) inspection reports after a transitional period aimed at determination of the equivalence of the regulatory systems of the parties, which is the cornerstone of this subpart.

§ 26.3 Scope.

(a) The provisions of this subpart shall apply to pharmaceutical inspections carried out in the United States and Member States of the European Community (EC) before products are marketed (hereafter referred to as ''preapproval inspections'') as well as during their marketing (hereafter referred to as ''postapproval inspections'').

(b) Appendix A of this subpart names the laws, regulations, and administrative provisions governing these inspections and the good manufacturing practices (GMP's) requirements.

(c) Appendix B of this subpart lists the authorities participating in activities under this subpart.

(d) Sections 26.65, 26.66, 26.67, 26.68, 26.69, and 26.70 of subpart C of this part do not apply to this subpart.

§ 26.4 Product coverage.

(a) The provisions of this subpart will apply to medicinal products for human or animal use, intermediates and starting materials (as referred to in the European Community (EC)) and to drugs for human or animal use, biological products for human use, and active pharmaceutical ingredients (as referred to in the United States), only to the extent they are regulated by the authorities of both parties as listed in Appendix B of this subpart.

(b) Human blood, human plasma, human tissues and organs, and veterinary immunologicals (under 9 CFR 101.2, ''veterinary immunologicals'' are referred to as ''veterinary biologicals'') are excluded from the scope of this subpart. Human plasma derivatives (such as immunoglobulins and albumin), investigational medicinal products/new drugs, human radiopharmaceuticals, and medicinal gases are also excluded during the transition phase; their situation will be reconsidered at the end of the transition period. Products regulated by the Food and Drug Administration's Center for Biologics Evaluation and Research as devices are not covered under this subpart.

(c) Appendix C of this subpart contains an indicative list of products covered by this subpart.

§ 26.5 Length of transition period.

A 3-year transition period will start immediately after the effective date described in § 26.80(a).

§ 26.6 Equivalence assessment.

(a) The criteria to be used by the parties to assess equivalence are listed in Appendix D of this subpart. Information pertaining to the criteria under European Community (EC) competence will be provided by the EC.

(b) The authorities of the parties will establish and communicate to each other their draft programs for assessing the equivalence of the respective regulatory systems in terms of quality assurance of the products and consumer protection. These programs will be carried out, as deemed necessary by the regulatory authorities, for post- and preapproval inspections and for various product classes or processes.

(c) The equivalence assessment shall include information exchanges (including inspection reports), joint training, and joint inspections for the purpose of assessing regulatory systems and the authorities' capabilities. In conducting the equivalence assessment, the parties will ensure that efforts are made to save resources.

(d) Equivalence assessment for authorities added to Appendix B of this subpart after the effective date described in § 26.80(a) will be conducted as described in this subpart, as soon as practicable.

§ 26.7 Participation in the equivalence assessment and determination.

The authorities listed in Appendix B of this subpart will actively participate in these programs to build a sufficient body of evidence for their equivalence determination. Both parties will exercise good faith efforts to complete equivalence assessment as expeditiously as possible to the extent the resources of the authorities allow.

§ 26.8 Other transition activities.

As soon as possible, the authorities will jointly determine the essential information which must be present in inspection reports and will cooperate to develop mutually agreed inspection report format(s).

§ 26.9 Equivalence determination.

(a) Equivalence is established by having in place regulatory systems covering the criteria referred to in Appendix D of this subpart, and a demonstrated pattern of consistent performance in accordance with these criteria. A list of authorities determined as equivalent shall be agreed to by the Joint Sectoral Committee at the end of the transition period, with reference to any limitation in terms of inspection type (e.g., postapproval or preapproval) or product classes or processes.

(b) The parties will document insufficient evidence of equivalence, lack of opportunity to assess equivalence or a determination of nonequivalence, in sufficient detail to allow the authority being assessed to know how to attain equivalence.

§ 26.10 Regulatory authorities not listed as currently equivalent.

Authorities not currently listed as equivalent, or not equivalent for certain types of inspections, product classes or processes may apply for reconsideration of their status once the necessary corrective measures have been taken or additional experience is gained.

§ 26.11 Start of operational period.

(a) The operational period shall start at the end of the transition period and its provisions apply to inspection reports generated by authorities listed as equivalent for the inspections performed in their territory.

(b) In addition, when an authority is not listed as equivalent based on adequate experience gained during the transition period, the Food and Drug Administration (FDA) will accept for normal endorsement (as provided in § 26.12) inspection reports generated as a result of inspections conducted jointly by that authority on its territory and another authority listed as equivalent, provided that the authority of the Member State in which the inspection is performed can guarantee enforcement of the findings of the inspection report and require that corrective measures be taken when necessary. FDA has the option to participate in these inspections, and based on experience gained during the transition period, the parties will agree on procedures for exercising this option.

(c) In the European Community (EC), the qualified person will be relieved of responsibility for carrying the controls laid down in Article 22 paragraph 1(b) of Council Directive 75/319/EEC (see Appendix A of this subpart) provided that these controls have been carried out in the United States and that each batch/lot is accompanied by a batch certificate (in accordance with the World Health Organization Certification Scheme on the Quality of Medicinal Products) issued by the manufacturer certifying that the product complies with requirements of the marketing authorization and signed by the person responsible for releasing the batch/lot.

§ 26.12 Nature of recognition of inspection reports.

(a) Inspection reports (containing information as established under § 26.8), including a good manufacturing practice (GMP) compliance assessment, prepared by authorities listed as equivalent, will be provided to the authority of the importing party. Based on the determination of equivalence in light of the experience gained, these inspection reports will normally be endorsed by the authority of the importing party, except under specific and delineated circumstances. Examples of such circumstances include indications of material inconsistencies or inadequacies in an inspection report, quality defects identified in the postmarket surveillance or other specific evidence of serious concern in relation to product quality or consumer safety. In such cases, the authority of the importing party may request clarification from the authority of the exporting party which may lead to a request for reinspection. The authorities will endeavor to respond to requests for clarification in a timely manner.

(b) Where divergence is not clarified in this process, an authority of the importing country may carry out an inspection of the production facility.

§ 26.13 Transmission of postapproval inspection reports.

Postapproval good manufacturing practice (GMP) inspection reports concerning products covered by this subpart will be transmitted to the authority of the importing country within 60-calendar days of the request. Should a new inspection be needed, the inspection report will be transmitted within 90-calendar days of the request.

§ 26.14 Transmission of preapproval inspection reports.

(a) A preliminary notification that an inspection may have to take place will be made as soon as possible.

(b) Within 15-calendar days, the relevant authority will acknowledge receipt of the request and confirm its ability to carry out the inspection. In the European Community (EC), requests will be sent directly to the relevant authority, with a copy to the European Agency for the Evaluation of Medicinal Products (EMEA). If the authority receiving the request cannot carry out the inspection as requested, the requesting authority shall have the right to conduct the inspection.

(c) Reports of preapproval inspections will be sent within 45-calendar days of the request that transmitted the appropriate information and detailed the precise issues to be addressed during the inspection. A shorter time may be necessary in exceptional cases and these will be described in the request.

§ 26.15 Monitoring continued equivalence.

Monitoring activities for the purpose of maintaining equivalence shall include review of the exchange of inspection reports and their quality and timeliness; performance of a limited number of joint inspections; and the conduct of common training sessions.

§ 26.16 Suspension.

(a) Each party has the right to contest the equivalence of a regulatory authority. This right will be exercised in an objective and reasoned manner in writing to the other party.

(b) The issue shall be discussed in the Joint Sectoral Committee promptly upon such notification. Where the Joint Sectoral Committee determines that verification of equivalence is required, it may be carried out jointly by the parties in a timely manner, under § 26.6.

(c) Efforts will be made by the Joint Sectoral Committee to reach unanimous consent on the appropriate action. If agreement to suspend is reached in the Joint Sectoral Committee, an authority may be suspended immediately thereafter. If no agreement is reached in the Joint Sectoral Committee, the matter is referred to the Joint Committee as described in § 26.73. If no unanimous consent is reached within 30 days after such notification, the contested authority will be suspended.

(d) Upon the suspension of authority previously listed as equivalent, a party is no longer obligated to normally endorse the inspection reports of the suspended authority. A party shall continue to normally endorse the inspection reports of that authority prior to suspension, unless the authority of the receiving party decides otherwise based on health or safety considerations. The suspension will remain in effect until unanimous consent has been reached by the parties on the future status of that authority.

§ 26.17 Role and composition of the Joint Sectoral Committee.

(a) A Joint Sectoral Committee is set up to monitor the activities under both the transitional and operational phases of this subpart.

(b) The Joint Sectoral Committee will be cochaired by a representative of the Food and Drug Administration (FDA) for the United States and a representative of the European Community (EC) who each will have one vote. Decisions will be taken by unanimous consent.

(c) The Joint Sectoral Committee's functions will include:

(1) Making a joint assessment, which must be agreed by both parties, of the equivalence of the respective authorities;

(2) Developing and maintaining the list of equivalent authorities, including any limitation in terms of inspecting type or products, and communicating the list to all authorities and the Joint Committee;

(3) Providing a forum to discuss issues relating to this subpart, including concerns that an authority may be no longer equivalent and opportunity to review product coverage; and

(4) Consideration of the issue of suspension.

(d) The Joint Sectoral Committee shall meet at the request of either party and, unless the cochairs otherwise agree, at least once each year. The Joint Committee will be kept informed of the agenda and conclusions of meetings of the Joint Sectoral Committee.

§ 26.18 Regulatory collaboration.

(a) The parties and authorities shall inform and consult one another, as permitted by law, on proposals to introduce new controls or to change existing technical regulations or inspection procedures and to provide the opportunity to comment on such proposals.

(b) The parties shall notify each other in writing of any changes to Appendix B of this subpart.

§ 26.19 Information relating to quality aspects.

The authorities will establish an appropriate means of exchanging information on any confirmed problem reports, corrective actions, recalls, rejected import consignments, and other regulatory and enforcement problems for products subject to this subpart.

§ 26.20 Alert system.

(a) The details of an alert system will be developed during the transitional period. The system will be maintained in place at all times. Elements to be considered in developing such a system are described in Appendix E of this subpart.

(b) Contact points will be agreed between both parties to permit authorities to be made aware with the appropriate speed in case of quality defect, recalls, counterfeiting, and other problems concerning quality, which could necessitate additional controls or suspension of the distribution of the product.

§ 26.21 Safeguard clause.

Each party recognizes that the importing country has a right to fulfill its legal responsibilities by taking actions necessary to ensure the protection of human and animal health at the level of protection it deems appropriate. This includes the suspension of the distribution, product detention at the border of the importing country, withdrawal of the batches and any request for additional information or inspection as provided in § 26.12.

Appendix A of Subpart A—List of Applicable Laws, Regulations, and Administrative Provisions.

1. For the European Community (EC):

[Copies of EC documents may be obtained from the European Document Research, 1100 17th St. NW., suite 301, Washington, DC 20036. EC documents may be viewed on the European Commission Pharmaceuticals Units web site at ''http://dg3.eudra.org''.]

Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation, or administrative action relating to proprietary medicinal products as extended, widened, and amended.

Council Directive 75/319/EEC of 20 May 1975 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products as extended, widened and amended.

Council Directive 81/851/EEC of 28 September 1981 on the approximation of the laws of the Member States relating to veterinary medicinal products, as widened and amended.

Commission Directive 91/356/EEC of 13 June 1991 laying down the principles and guidelines of good manufacturing practice for medicinal products for human use.

Commission Directive 91/412/EEC of 23 July 1991 laying down the principles and guidelines of good manufacturing practice for veterinary medicinal products.

Council Regulation EEC No 2309/93 of 22 July 1993 laying down Community procedures for the authorization and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products.

Council Directive 92/25/EEC of 31 March 1992 on the wholesale distribution of medicinal products for human use.

Guide to Good Distribution Practice (94/C 63/03).

Current version of the Guide to Good Manufacturing Practice, Rules Governing Medicinal Products in the European Community, Volume IV.

2. For the United States:

[Copies of FDA documents may be obtained from the Government Printing Office, 1510 H St. NW., Washington, DC 20005. FDA documents, except the FDA Compliance Program Guidance Manual, may be viewed on FDA's Internet web site at ''http://www.FDA.gov''.]

Relevant sections of the United States Federal Food, Drug, and Cosmetic Act and the United States Public Health Service Act.

Relevant sections of Title 21, United States Code of Federal Regulations (CFR) Parts 1–99, Parts 200–299, Parts 500–599, and Parts 600–799.

Relevant sections of the FDA Investigations Operations Manual, the FDA Regulatory Procedures Manual, the FDA Compliance Policy Guidance Manual, the FDA Compliance Program Guidance Manual, and other FDA guidances.

Appendix B of Subpart A—List of Authorities.

1. For the United States: In the United States, the regulatory authority is the Food and Drug Administration.

2. For the European Community: In the European Community, the regulatory authorities are the following:

Belgium: Inspection générale de la Pharmacie, Algemene Farmaceutische Inspectie.

Denmark: Laegemiddelstyrelsen.

Germany: Bundesministerium für Gesundheit for immunologicals: Paul-Ehrlich-Institut, Federal Agency for Sera and Vaccines.

Greece: Εθνικος Οργανισμος Φαρμακου, Ministry of Health and Welfare, National Drug Organization (E.O.F).

Spain: For medicinal products for human use: Ministerio de Sanidad y Consumo, Subdirección General de Control Farmacéutico. For medicinal products for veterinary use: Ministerio de Agricultura, Pesca y Alimentación (MAPA), Dirección General de la Producción Agraria.

France: For medicinal products for human use: Agence du Médicament. For veterinary medicinal products: Agence Nationale du Médicament Vétérinaire.

Ireland: Irish Medicines Board.

Italy: For medicinal products for human use: Ministero della Sanità, Dipartimento Farmaci e Farmacovigilanza. For medicinal products for veterinary use: Ministero della Sanità, Dipartimento alimenti e nutrizione e sanità pubblica veterinaria–Div. IX.

Luxembourg: Division de la Pharmacie et des Médicaments.

Netherlands: Staat der Nederlanden.

Austria: Bundesministerium für Arbeit, Gesundheit und Soziales.

Portugal: Instituto da Farmácia e do Medicamento (INFARMED).

Finland: Lääkelaitos/Läkemedelsverket (National Agency for Medicines).

Sweden: Läkemedelsverket–Medical Products Agency.

United Kingdom: For human use and veterinary (non-immunologicals): Medicines Control Agency. For veterinary immunologicals: Veterinary Medicines Directorate.

European Community: Commission of the European Communities. European Agency

for the Evaluation of Medicinal Products (EMEA).

Appendix C of Subpart A—Indicative List of Products Covered by Subpart A.

Recognizing that precise definition of medicinal products and drugs are to be found in the legislation referred to above, an indicative list of products covered by this arrangement is given below:

- human medicinal products including prescription and nonprescription drugs;
- human biologicals including vaccines, and immunologicals;
- veterinary pharmaceuticals, including prescription and nonprescription drugs, with the exclusion of veterinary immunologicals (Under 9 CFR 101.2 ''veterinary immunologicals'' are referred to as ''veterinary biologicals'');
- premixes for the preparation of veterinary medicated feeds (EC), Type A medicated articles for the preparation of veterinary medicated feeds (United States);
- intermediate products and active pharmaceutical ingredients or bulk pharmaceuticals (United States)/starting materials (EC).

Appendix D of Subpart A—Criteria for Assessing Equivalence for Post- and Preapproval.

I. Legal/Regulatory authority and structures and procedures providing for post- and preapproval:

A. Appropriate statutory mandate and jurisdiction.
B. Ability to issue and update binding requirements on GMP's and guidance documents.
C. Authority to make inspections, review and copy documents, and to take samples and collect other evidence.
D. Ability to enforce requirements and to remove products found in violation of such requirements from the market.
E. Substantive current good manufacturing requirements.
F. Accountability of the regulatory authority.
G. Inventory of current products and manufacturers.
H. System for maintaining or accessing inspection reports, samples and other analytical data, and other firm/product information relating to matters covered by subpart A of this part.

II. Mechanisms in place to assure appropriate professional standards and avoidance of conflicts of interest.

III. Administration of the regulatory authority:

A. Standards of education/qualification and training.
B. Effective quality assurance systems measures to ensure adequate job performance.
C. Appropriate staffing and resources to enforce laws and regulations.

IV. Conduct of inspections:

A. Adequate preinspection preparation, including appropriate expertise of investigator/team, review of firm/product and databases, and availability of appropriate inspection equipment.
B. Adequate conduct of inspection, including statutory access to facilities, effective response to refusals, depth and competence of evaluation of operations, systems and documentation; collection of evidence; appropriate duration of inspection and completeness of written report of observations to firm management.
C. Adequate postinspection activities, including completeness of inspectors' report, inspection report review where appropriate, and conduct of followup inspections and other activities where appropriate, assurance of preservation and retrieval of records.

V. Execution of regulatory enforcement actions to achieve corrections, designed to prevent future violations, and to remove products found in violation of requirements from the market.

VI. Effective use of surveillance systems:

A. Sampling and analysis.
B. Recall monitoring.
C. Product defect reporting system.
D. Routine surveillance inspections.
E. Verification of approved manufacturing process changes to marketing authorizations/approved applications.

VII. Additional specific criteria for preapproval inspections:

A. Satisfactory demonstration through a jointly developed and administered training program and joint inspections to assess the regulatory authorities' capabilities.
B. Preinspection preparation includes the review of appropriate records, including site plans and drug master file or similar documentation to enable adequate inspections.
C. Ability to verify chemistry, manufacturing, and control data supporting an application is authentic and complete.
D. Ability to assess and evaluate research and development data as scientifically sound, especially transfer technology of pilot, scale up and full scale production batches.
E. Ability to verify conformity of the onsite processes and procedures with those described in the application.
F. Review and evaluate equipment installation, operational and performance qualification data, and evaluate test method validation.

Appendix E of Subpart A—Elements to be Considered in Developing a Two-Way Alert System.

1. Documentation

- Definition of a crisis/emergency and under what circumstances an alert is required
- Standard Operating Procedures (SOP's)
- Mechanism of health hazards evaluation and classification
- Language of communication and transmission of information

2. Crisis Management System

- Crisis analysis and communication mechanisms
- Establishment of contact points
- Reporting mechanisms

3. Enforcement Procedures

- Followup mechanisms
- Corrective action procedures

4. Quality Assurance System

- Pharmacovigilance programme
- Surveillance/monitoring of implementation of corrective action

5. Contact Points

For the purpose of subpart A of this part, the contact points for the alert system will be:

A. For the European Community:

the Executive Director of the European Agency for the Evaluation of Medicinal Products, 7, Westferry Circus, Canary Wharf, UK - London E14 4HB, England. Telephone 44–171–418 8400, Fax 418–8416.

B. For the United States :

Biologics: Director, Office of Compliance and Biologics Quality (HFM–600), 1401 Rockville Pike, Rockville, MD 20852, phone: 301–827–6190, fax: 301–594-1944.
Human Drugs: Director, Office of Compliance (HFD–300), MPN I, 7520 Standish Pl., Rockville, MD 20855–2737, phone: 301–594–0054, fax: 301–594–2114.
Veterinary Drugs: Director, Office of Surveillance and Compliance (HFV–200), MPN II, 7500 Standish Pl., Rockville, MD 20855–2773, phone: 301–827–6644, fax: 301–594–1807.

Subpart B—Specific Sector Provisions for Medical Devices

§ 26.31 Purpose.

(a) The purpose of this subpart is to specify the conditions under which a party will accept the results of quality system-related evaluations and inspections and premarket evaluations of the other party with regard to medical devices as conducted by listed conformity assessment bodies (CAB's) and to provide for other related cooperative activities.

(b) This subpart is intended to evolve as programs and policies of the parties evolve. The parties will review this subpart periodically, in order to assess progress and identify potential enhancements to this subpart as Food and Drug Administration (FDA) and European Community (EC) policies evolve over time.

§ 26.32 Scope.

(a) The provisions of this subpart shall apply to the exchange and, where appropriate, endorsement of the following types of reports from conformity assessment bodies (CAB's) assessed to be equivalent:

(1) Under the U.S. system, surveillance/postmarket and initial/preapproval inspection reports;

(2) Under the U.S. system, premarket (510(k)) product evaluation reports;

(3) Under the European Community (EC) system, quality system evaluation reports; and

(4) Under the EC system, EC type examination and verification reports.

(b) Appendix A of this subpart names the legislation, regulations, and related procedures under which:

(1) Products are regulated as medical devices by each party;

(2) CAB's are designated and confirmed; and

(3) These reports are prepared.

(c) For purposes of this subpart, equivalence means that: CAB's in the EC are capable of conducting product and quality systems evaluations against U.S. regulatory requirements in a manner equivalent to those conducted by FDA; and CAB's in the United States are capable of conducting product and quality systems evaluations against EC regulatory requirements in a manner equivalent to those conducted by EC CAB's.

§ 26.33 Product coverage.

(a) There are three components to this subpart each covering a discrete range of products:

(1) *Quality System Evaluations*. U.S.-type surveillance/postmarket and initial/preapproval inspection reports and European Community (EC)-type quality system evaluation reports will be exchanged with regard to all products regulated under both U.S. and EC law as medical devices.

(2) *Product Evaluation*. U.S.-type premarket (510(k)) product evaluation reports and EC-type-testing reports will be exchanged only with regard to those products classified under the U.S. system as Class I/Class II-Tier 2 medical devices which are listed in Appendix B of this subpart.

(3) *Postmarket Vigilance Reports*. Postmarket vigilance reports will be exchanged with regard to all products regulated under both U.S. and EC law as medical devices.

(b) Additional products and procedures may be made subject to this subpart by agreement of the parties.

§ 26.34 Regulatory authorities.

The regulatory authorities shall have the responsibility of implementing the provisions of this subpart, including the designation and monitoring of conformity assessment bodies (CAB's). Regulatory authorities will be specified in Appendix C of this subpart. Each party will promptly notify the other party in writing of any change in the regulatory authority for a country.

§ 26.35 Length and purpose of transition period.

There will be a 3-year transition period immediately following the date described in § 26.80(a). During the transition period, the parties will engage in confidence-building activities for the purpose of obtaining sufficient evidence to make determinations concerning the equivalence of conformity assessment bodies (CAB's) of the other party with respect to the ability to perform quality system and product evaluations or other reviews resulting in reports to be exchanged under this subpart.

§ 26.36 Listing of CAB's.

Each party shall designate conformity assessment bodies (CAB's) to participate in confidence building activities by transmitting to the other party a list of CAB's which meet the criteria for technical competence and independence, as identified in Appendix A of this subpart. The list shall be accompanied by supporting evidence. Designated CAB's will be listed in Appendix D of this subpart for participation in the confidence building activities once confirmed by the importing party. Nonconfirmation would have to be justified based on documented evidence.

§ 26.37 Confidence building activities.

(a) At the beginning of the transitional period, the Joint Sectoral Group will establish a joint confidence building program calculated to provide sufficient evidence of the capabilities of the designated conformity assessment bodies (CAB's) to perform quality system or product evaluations to the specifications of the parties.

(b) The joint confidence building program should include the following actions and activities:

(1) Seminars designed to inform the parties and CAB's about each party's regulatory system, procedures, and requirements;

(2) Workshops designed to provide the parties with information regarding requirements and procedures for the designation and surveillance of CAB's;

(3) Exchange of information about reports prepared during the transition period;

(4) Joint training exercises; and

(5) Observed inspections.

(c) During the transition period, any significant problem that is identified with a CAB may be the subject of cooperative activities, as resources allow and as agreed to by the regulatory authorities, aimed at resolving the problem.

(d) Both parties will exercise good faith efforts to complete the confidence building activities as expeditiously as possible to the extent that the resources of the parties allow.

(e) Both the parties will each prepare annual progress reports which will describe the confidence building activities undertaken during each year of the transition period. The form and content of the reports will be determined by the parties through the Joint Sectoral Committee.

§ 26.38 Other transition period activities.

(a) During the transition period, the parties will jointly determine the necessary information which must be present in quality system and product evaluation reports.

(b) The parties will jointly develop a notification and alert system to be used in case of defects, recalls, and other problems concerning product quality that could necessitate additional actions (e.g., inspections by the parties of the importing country) or suspension of the distribution of the product.

§ 26.39 Equivalence assessment.

(a) In the final 6 months of the transition period, the parties shall proceed to a joint assessment of the equivalence of the conformity assessment bodies (CAB's) that participated in the confidence building activities. CAB's will be determined to be equivalent provided they have demonstrated proficiency through the submission of a sufficient number of adequate reports. CAB's may be determined to be equivalent with regard to the ability to perform any type of quality system or product evaluation covered by this subpart and with regard to any type of product covered by this subpart. The parties shall develop a list contained in Appendix E of this subpart of CAB's determined to be equivalent, which shall contain a full explanation of the scope of the equivalency determination, including any appropriate limitations, with regard to performing any type of quality system or product evaluation.

(b) The parties shall allow CAB's not listed for participation in this subpart, or listed for participation only as to certain types of evaluations, to apply for participation in this subpart once the necessary measures have been taken or sufficient experience has been gained, in accordance with § 26.46.

(c) Decisions concerning the equivalence of CAB's must be agreed to by both parties.

§ 26.40 Start of the operational period.

(a) The operational period will start at the end of the transition period after the parties have developed the list of conformity assessment bodies (CAB's) found to be equivalent. The provisions of §§ 26.40, 26.41, 26.42, 26.43, 26.44, 26.45, and 26.46 will apply only with regard to listed CAB's and only to the extent of any specifications and

limitations contained on the list with regard to a CAB.

(b) The operational period will apply to quality system evaluation reports and product evaluation reports generated by CAB's listed in accordance with this subpart for the evaluations performed in the respective territories of the parties, except if the parties agree otherwise.

§ 26.41 Exchange and endorsement of quality system evaluation reports.

(a) Listed European Community (EC) conformity assessment bodies (CAB's) will provide FDA with reports of quality system evaluations, as follows:

(1) For preapproval quality system evaluations, EC CAB's will provide full reports; and

(2) For surveillance quality system evaluations, EC CAB's will provide abbreviated reports.

(b) Listed U.S. CAB's will provide to the EC Notified Body of the manufacturer's choice:

(1) Full reports of initial quality system evaluations;

(2) Abbreviated reports of quality systems surveillance audits.

(c) If the abbreviated reports do not provide sufficient information, the importing party may request additional clarification from the CAB.

(d) Based on the determination of equivalence in light of the experience gained, the quality system evaluation reports prepared by the CAB's listed as equivalent will normally be endorsed by the importing party, except under specific and delineated circumstances. Examples of such circumstances include indications of material inconsistencies or inadequacies in a report, quality defects identified in postmarket surveillance or other specific evidence of serious concern in relation to product quality or consumer safety. In such cases, the importing party may request clarification from the exporting party which may lead to a request for reinspection. The parties will endeavor to respond to requests for clarification in a timely manner. Where divergence is not clarified in this process, the importing party may carry out the quality system evaluation.

§ 26.42 Exchange and endorsement of product evaluation reports.

(a) European Community (EC) conformity assessment bodies (CAB's) listed for this purpose will, subject to the specifications and limitations on the list, provide to FDA 510(k) premarket notification assessment reports prepared to U.S. medical device requirements.

(b) U.S. CAB's will, subject to the specifications and limitations on the list, provide to the EC Notified Body of the manufacturer's choice, type examination, and verification reports prepared to EC medical device requirements.

(c) Based on the determination of equivalence in light of the experience gained, the product evaluation reports prepared by the CAB's listed as equivalent will normally be endorsed by the importing party, except under specific and delineated circumstances. Examples of such circumstances include indications of material inconsistencies, inadequacies, or incompleteness in a product evaluation report, or other specific evidence of serious concern in relation to product safety, performance, or quality. In such cases, the importing party may request clarification from the exporting party which may lead to a request for a reevaluation. The parties will endeavor to respond to requests for clarification in a timely manner. Endorsement remains the responsibility of the importing party.

§ 26.43 Transmission of quality system evaluation reports.

Quality system evaluation reports covered by § 26.41 concerning products covered by this subpart shall be transmitted to the importing party within 60-calendar days of a request by the importing party. Should a new inspection be requested, the time period shall be extended by an additional 30-calendar days. A party may request a new inspection, for cause, identified to the other party. If the exporting party cannot perform an inspection within a specified period of time, the importing party may perform an inspection on its own.

§ 26.44 Transmission of product evaluation reports.

Transmission of product evaluation reports will take place according to the importing party's specified procedures.

§ 26.45 Monitoring continued equivalence.

Monitoring activities will be carried out in accordance with § 26.69.

§ 26.46 Listing of additional CAB's.

(a) During the operational period, additional conformity assessment bodies (CAB's) will be considered for equivalence using the procedures and criteria described in §§ 26.36, 26.37, and 26.39, taking into account the level of confidence gained in the overall regulatory system of the other party.

(b) Once a designating authority considers that such CAB's, having undergone the procedures of §§ 26.36, 26.37, and 26.39, may be determined to be equivalent, it will then designate those bodies on an annual basis. Such procedures satisfy the procedures of § 26.66(a) and (b).

(c) Following such annual designations, the procedures for confirmation of CAB's under § 26.66(c) and (d) shall apply.

§ 26.47 Role and composition of the Joint Sectoral Committee.

(a) The Joint Sectoral Committee for this subpart is set up to monitor the activities under both the transitional and operational phases of this subpart.

(b) The Joint Sectoral Committee will be cochaired by a representative of the Food and Drug Administration (FDA) for the United States and a representative of the European Community (EC) who will each have one vote. Decisions will be taken by unanimous consent.

(c) The Joint Sectoral Committee's functions will include:

(1) Making a joint assessment of the equivalence of conformity assessment bodies (CAB's);

(2) Developing and maintaining the list of equivalent CAB's, including any limitation in terms of their scope of activities and communicating the list to all authorities and the Joint Committee described in subpart C of this part;

(3) Providing a forum to discuss issues relating to this subpart, including concerns that a CAB may no longer be equivalent and opportunity to review product coverage; and

(4) Consideration of the issue of suspension.

§ 26.48 Harmonization.

During both the transitional and operational phases of this subpart, both parties intend to continue to participate in the activities of the Global Harmonization Task Force (GHTF) and utilize the results of those activities to the extent possible. Such participation involves developing and reviewing documents developed by the GHTF and jointly determining whether they are applicable to the implementation of this subpart.

§ 26.49 Regulatory cooperation.

(a) The parties and authorities shall inform and consult with one another, as permitted by law, of proposals to introduce new controls or to change existing technical regulations or inspection procedures and to provide the opportunity to comment on such proposals.

(b) The parties shall notify each other in writing of any changes to Appendix A of this subpart.

§ 26.50 Alert system and exchange of postmarket vigilance reports.

(a) An alert system will be set up during the transition period and maintained thereafter by which the parties will notify each other when there is an immediate danger to public health. Elements of such a system will be described in an Appendix F of this subpart. As part of that system, each party shall notify the other party of any confirmed problem reports, corrective actions, or recalls. These reports are regarded as part of ongoing investigations.

(b) Contact points will be agreed between both parties to permit authorities to be made aware with the appropriate speed in case of quality defect, batch recalls, counterfeiting and other problems concerning quality, which could necessitate additional controls or suspension of the distribution of the product.

Appendix A of Subpart B—Relevant Legislation, Regulations, and Procedures.

1. For the European Community (EC) the following legislation applies to § 26.42(a) of this subpart:

[Copies of EC documents may be obtained from the European Document Research, 1100 17th St. NW., suite 301, Washington, DC 20036.]

a. Council Directive 90/385/EEC of 20 June 1990 on active implantable medical devices
OJ No. L 189, 20.7. 1990, p. 17. Conformity assessment procedures.
Annex 2 (with the exception of section 4)
Annex 4
Annex 5

b. Council Directive 93/42/EEC of 14 June 1993 on Medical Devices OJ No. L 169,12.7.1993, p.1. Conformity assessment procedures.
Annex 2 (with the exception of section 4)
Annex 3
Annex 4
Annex 5
Annex 6

2. For the United States, the following legislation applies to § 26.32(a):

[Copies of FDA documents may be obtained from the Government Printing Office, 1510 H St. NW., Washington, DC 20005. FDA documents may be viewed on FDA's Internet web site at ''http://www.fda.gov''.]

a. The Federal Food, Drug and Cosmetic Act, 21 U.S.C. 321 *et seq.*

b. The Public Health Service Act, 42 U.S.C. 201 *et seq.*

c. Regulations of the United States Food and Drug Administration found at 21 CFR, in particular, Parts 800 to 1299.

d. Medical Devices; Third Party Review of Selected Premarket Notifications; Pilot Program, 61 FR 14789–14796 (April 3, 1996).

e. Draft Guidance Document on Accredited Persons Program, 63 FR 28392 (May 22, 1998).

f. Draft Guidance for Staff, Industry and Third Parties, Third Party Programs under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition Between the United States of America and the European Community (MRA), 63 FR 36240 (July 2, 1998).

g. Guidance Document on Use of Standards, 63 FR 9561 (February 25, 1998).

Appendix B of Subpart B—Scope of Product Coverage.

1. Initial Coverage of the Transition Period

Upon entry into force of this subpart as described in § 26.80 (it is understood that the date of entry into force will not occur prior to June 1, 1998, unless the parties decide otherwise), products qualifying for the transitional arrangements under this subpart include:

a. All Class I products requiring premarket evaluations in the United States—see Table 1.
b. Those Class II products listed in Table 2.

2. During the Transition Period

The parties will jointly identify additional product groups, including their related accessories, in line with their respective priorities as follows:

a. Those for which review may be based primarily on written guidance which the parties will use their best efforts to prepare expeditiously; and
b. Those for which review may be based primarily on international standards, in order for the parties to gain the requisite experience.

The corresponding additional product lists will be phased in on an annual basis. The parties may consult with industry and other interested parties in determining which products will be added.

3. Commencement of the Operational Period

a. At the commencement of the operational period, product coverage shall extend to all Class I/II products covered during the transition period.
b. FDA will expand the program to categories of Class II devices as is consistent with the results of the pilot, and with FDA's ability to write guidance documents if the device pilot for the third party review of medical devices is successful. The MRA will cover to the maximum extent feasible all Class II devices listed in Table 3 for which FDA-accredited third party review is available in the United States.

4. Unless explicitly included by joint decision of the parties, this part does not cover any U.S. Class II-tier 3 or any Class III product under either system.

[The lists of medical devices included in these tables are subject to change as a result of the Food and Drug Administration Modernization Act of 1997.]

Table 1.—Class I Products Requiring Premarket Evaluations in the United States, Included in Scope of Product Coverage at Beginning of Transition Period[1]

21 CFR Section No.	Regulation Name Product Code—Device Name
Anesthesiology Panel (21 CFR Part 868)	
868.1910	Esophageal Stethoscope BZW—Stethoscope, Esophageal
868.5620	Breathing Mouthpiece BYP—Mouthpiece, Breathing
868.5640	Medicinal Nonventilatory Nebulizer (Atomizer) CCQ—Nebulizer, Medicinal, Nonventilatory (Atomizer)
868.5675	Rebreathing Device BYW—Device, Rebreathing
868.5700	Nonpowered Oxygen Tent FOG—Hood, Oxygen, Infant BYL—Tent, Oxygen
868.6810	Tracheobronchial Suction Catheter BSY—Catheters, Suction, Tracheobronchial
Cardiovascular Panel	
(None)	
Dental Panel (21 CFR Part 872)	
872.3400	Karaya and Sodium Borate With or Without Acacia Denture Adhesive KOM—Adhesive, Denture, Acacia and Karaya With Sodium Borate

Table 1.—Class I Products Requiring Premarket Evaluations in the United States, Included in Scope of Product Coverage at Beginning of Transition Period[1]—Continued

21 CFR Section No.	Regulation Name Product Code—Device Name
872.3700	Dental Mercury (U.S.P.) ELY—Mercury
872.4200	Dental Handpiece and Accessories EBW—Controller, Food, Handpiece and Cord EFB—Handpiece, Air-Powered, Dental EFA—Handpiece, Belt and/or Gear Driven, Dental EGS—Handpiece, Contra- and Right-Angle Attachment, Dental EKX—Handpiece, Direct Drive, AC-Powered EKY—Handpiece, Water-Powered
872.6640	Dental Operative Unit and Accessories EIA—Unit, Operative Dental
Ear, Nose, and Throat Panel (21 CFR Part 874)	
874.1070	Short Increment Sensitivity Index (SISI) Adapter ETR—Adapter, Short Increment Sensitivity Index (SISI)
874.1500	Gustometer ETM—Gustometer
874.1800	Air or Water Caloric Stimulator KHH—Stimulator, Caloric-Air ETP—Stimulator, Caloric-Water
874.1925	Toynbee Diagnostic Tube ETK—Tube, Toynbee Diagnostic
874.3300	Hearing Aid LRB—Face Plate Hearing-Aid ESD—Hearing-aid, Air-Conduction
874.4100	Epistaxis Balloon EMX—Balloon, Epistaxis
874.5300	ENT Examination and Treatment Unit ETF—Unit, Examining/Treatment, ENT
874.5550	Powered Nasal Irrigator KMA—Irrigator, Powered Nasal
874.5840	Antistammering Device KTH—Device, Anti-Stammering
Gastroenterology—Urology Panel (21 CFR Part 876)	
876.5160	Urological Clamp for Males FHA—Clamp, Penile
876.5210	Enema Kit FCE—Kit, Enema, (for Cleaning Purpose)
876.5250	Urine Collector and Accessories FAQ—Bag, Urine Collection, Leg, for External Use
General Hospital Panel (21 CFR Part 880)	
880.5270	Neonatal Eye Pad FOK—Pad, Neonatal Eye
880.5420	Pressure Infusor for an I.V. Bag KZD—Infusor, Pressure, for I.V. Bags
880.5680	Pediatric Position Holder FRP—Holder, Infant Position
880.6250	Patient Examination Glove LZB—Finger Cot FMC—Glove, Patient Examination LYY—Glove, Patient Examination, Latex LZA—Glove, Patient Examination, Poly LZC—Glove, Patient Examination, Speciality LYZ—Glove, Patient Examination, Vinyl
880.6375	Patient Lubricant KMJ—Lubricant, Patient
880.6760	Protective Restraint BRT—Restraint, Patient, Conductive FMQ—Restraint, Protective
Neurology Panel (21 CFR Part 882)	
882.1030	Ataxiagraph GWW—Ataxiagraph
882.1420	Electroencephalogram (EEG) Signal Spectrum Analyzer GWS—Analyzer, Spectrum, Electroencephalogram Signal
882.4060	Ventricular Cannula HCD—Cannula, Ventricular
882.4545	Shunt System Implantation Instrument GYK—Instrument, Shunt System Implantation
882.4650	Neurosurgical Suture Needle HAS—Needle, Neurosurgical Suture

Table 1.—Class I Products Requiring Premarket Evaluations in the United States, Included in Scope of Product Coverage at Beginning of Transition Period[1]—Continued

21 CFR Section No.	Regulation Name Product Code—Device Name
882.4750	Skull Punch GXJ—Punch, Skull
Obstetrics and Gynecology Panel	
(None)	
Ophthalmology Panel (21 CFR Part 886)	
886.1780	Retinoscope HKM—Retinoscope, Battery-Powered
886.1940	Tonometer Sterilizer HKZ—Sterilizer, Tonometer
886.4070	Powered Corneal Burr HQS—Burr, Corneal, AC-Powered HOG—Burr, Corneal, Battery-Powered HRG—Engine, Trephine, Accessories, AC-Powered HFR—Engine, Trephine, Accessories, Battery-Powered HLD—Engine, Trephine, Accessories, Gas-Powered
886.4370	Keratome HNO—Keratome, AC-Powered HMY—Keratome, Battery-Powered
886.5850	Sunglasses (Nonprescription) HQY—Sunglasses (Nonprescription Including Photosensitive)
Orthopedic Panel (21 CFR Part 888)	
888.1500	Goniometer KQX—Goniometer, AC-Powered
888.4150	Calipers for Clinical Use KTZ—Caliper
Physical Medicine Panel (21 CFR Part 890)	
890.3850	Mechanical Wheelchair LBE—Stroller, Adaptive IOR—Wheelchair, Mechanical
890.5180	Manual Patient Rotation Bed INY—Bed, Patient Rotation, Manual
890.5710	Hot or Cold Disposable Pack IMD—Pack, Hot or Cold, Disposable
Radiology Panel (21 CFR Part 892)	
892.1100	Scintillation (Gamma) Camera IYX—Camera, Scintillation (Gamma)
892.1110	Positron Camera IZC—Camera, Positron
892.1300	Nuclear Rectilinear Scanner IYW—Scanner, Rectilinear, Nuclear
892.1320	Nuclear Uptake Probe IZD—Probe, Uptake, Nuclear
892.1330	Nuclear Whole Body Scanner JAM—Scanner, Whole Body, Nuclear
892.1410	Nuclear Electrocardiograph Synchronizer IVY—Synchronizer, Electrocardiograph, Nuclear
892.1890	Radiographic Film Illuminator IXC—Illuminator, Radiographic-Film JAG—Illuminator, Radiographic-Film, Explosion-Proof
892.1910	Radiographic Grid IXJ—Grid, Radiographic
892.1960	Radiographic Intensifying Screen EAM—Screen, Intensifying, Radiographic
892.1970	Radiographic ECG/Respirator Synchronizer IXO—Synchronizer, ECG/Respirator, Radiographic
892.5650	Manual Radionuclide Applicator System IWG—System, Applicator, Radionuclide, Manual
General and Plastic Surgery Panel (21 CFR Part 878)	
878.4200	Introduction/Drainage Catheter and Accessories KGZ—Accessories, Catheter GCE—Adaptor, Catheter FGY—Cannula, Injection GBA—Catheter, Balloon Type GBZ—Catheter, Cholangiography GBQ—Catheter, Continuous Irrigation GBY—Catheter, Eustachian, General & Plastic Surgery JCY—Catheter, Infusion GBX—Catheter, Irrigation GBP—Catheter, Multiple Lumen

Table 1.—Class I Products Requiring Premarket Evaluations in the United States, Included in Scope of Product Coverage at Beginning of Transition Period[1]—Continued

21 CFR Section No.	Regulation Name
	Product Code—Device Name
	GBO—Catheter, Nephrostomy, General & Plastic Surgery
	GBN—Catheter, Pediatric, General & Plastic Surgery
	GBW—Catheter, Peritoneal
	GBS—Catheter, Ventricular, General & Plastic Surgery
	GCD—Connector, Catheter
	GCC—Dilator, Catheter
	GCB—Needle, Catheter
878.4320	Removable Skin Clip
	FZQ—Clip, Removable (Skin)
878.4460	Surgeon's Gloves
	KGO—Surgeon's Gloves
878.4680	Nonpowered, Single Patient, Portable Suction Apparatus
	GCY—Apparatus, Suction, Single Patient Use, Portable, Nonpowered
878.4760	Removable Skin Staple
	GDT—Staple, Removable (Skin)
878.4820	AC–Powered, Battery-Powered, and Pneumatically Powered Surgical Instrument Motors and Accessories/Attachments
	GFG—Bit, Surgical
	GFA—Blade, Saw, General & Plastic Surgery
	DWH—Blade, Saw, Surgical, Cardiovascular
	BRZ—Board, Arm (With Cover)
	GFE—Brush, Dermabrasion
	GFF—Bur, Surgical, General & Plastic Surgery
	KDG—Chisel (Osteotome)
	GFD—Dermatome
	GFC—Driver, Surgical, Pin
	GFB—Head, Surgical, Hammer
	GEY—Motor, Surgical Instrument, AC-Powered
	GET—Motor, Surgical Instrument, Pneumatic Powered
	DWI—Saw, Electrically Powered
	KFK—Saw, Pneumatically Powered
	HAB—Saw, Powered, and Accessories
878.4960	Air or AC-Powered Operating Table and Air or AC-Powered Operating Chair & Accessories
	GBB—Chair, Surgical, AC-Powered
	FQO—Table, Operating-Room, AC-Powered
	GDC—Table, Operating-Room, Electrical
	FWW—Table, Operating-Room, Pneumatic
	JEA—Table, Surgical with Orthopedic Accessories, AC-Powered
880.5090	Liquid Bandage
	KMF—Bandage, Liquid

[1]Descriptive information on product codes, panel codes, and other medical device identifiers may be viewed on FDA's Internet Web Site at ''http://www.fda.gov/cdrh/prodcode.html''.

Table 2.—Class II Medical Devices Included in Scope of Product Coverage at Beginning of Transition Period (United States to develop guidance documents identifying U.S. requirements and European Community (EC) to identify standards needed to meet EC requirements)[1]

Panel	21 CFR Section No.	Regulation Name
		Product Code—Device Name
RA	892.1000	Magnetic Resonance Diagnostic Device
		MOS—COIL, Magnetic Resonance, Specialty
		LNH—System, Nuclear Magnetic Resonance Imaging
		LNI—System, Nuclear Magnetic Resonance Spectroscopic
Diagnostic Ultrasound:		
RA	892.1540	Nonfetal Ultrasonic Monitor
		JAF—Monitor, Ultrasonic, Nonfetal
RA	892.1550	Ultrasonic Pulsed Doppler Imaging System
		IYN—System, Imaging, Pulsed Doppler, Ultrasonic
RA	892.1560	Ultrasonic Pulsed Echo Imaging System
		IYO—System, Imaging, Pulsed Echo, Ultrasonic
RA	892.1570	Diagnostic Ultrasonic Transducer
		ITX—Transducer, Ultrasonic, Diagnostic

Table 2.—Class II Medical Devices Included in Scope of Product Coverage at Beginning of Transition Period (United States to develop guidance documents identifying U.S. requirements and European Community (EC) to identify standards needed to meet EC requirements)[1]—Continued

Panel	21 CFR Section No.	Regulation Name
		Product Code—Device Name
Diagnostic X-Ray Imaging Devices (except mammographic x-ray systems):		
RA	892.1600	Angiographic X-Ray System IZI—System, X-Ray, Angiographic
RA	892.1650	Image-Intensified Fluoroscopic X-Ray System MQB—Solid State X-Ray Imager (Flat Panel/Digital Imager) JAA—System, X-Ray, Fluoroscopic, Image-Intensified
RA	892.1680	Stationary X-Ray System KPR—System, X-Ray, Stationary
RA	892.1720	Mobile X-Ray System IZL—System, X-Ray, Mobile
RA	892.1740	Tomographic X-Ray System IZF—System, X-Ray, Tomographic
RA	892.1750	Computed Tomography X-Ray System JAK—System, X-Ray, Tomography, Computed
ECG-Related Devices:		
CV	870.2340	Electrocardiograph DPS—Electrocardiograph MLC—Monitor, ST Segment
CV	870.2350	Electrocardiograph Lead Switching Adaptor DRW—Adaptor, Lead Switching, Electrocardiograph
CV	870.2360	Electrocardiograph Electrode DRX—Electrode, Electrocardiograph
CV	870.2370	Electrocardiograph Surface Electrode Tester KRC—Tester, Electrode, Surface, Electrocardiographic
NE	882.1400	Electroencephalograph GWQ—Electroencephalograph
HO	880.5725	Infusion Pump (external only) MRZ—Accessories, Pump, Infusion FRN—Pump, Infusion LZF—Pump, Infusion, Analytical Sampling MEB—Pump, Infusion, Elastomeric LZH—Pump, Infusion, Enteral MHD—Pump, Infusion, Gallstone Dissolution LZG—Pump, Infusion, Insulin MEA—Pump, Infusion, PCA
Ophthalmic Instruments:		
OP	886.1570	Ophthalmoscope HLI—Ophthalmoscope, AC-Powered HLJ—Ophthalmoscope, Battery-Powered
OP	886.1780	Retinoscope HKL—Retinoscope, AC-Powered
OP	886.1850	AC-Powered Slit-Lamp Biomicroscope HJO—Biomicroscope, Slit-Lamp, AC-Powered
OP	886.4150	Vitreous Aspiration and Cutting Instrument MMC—Dilator, Expansive Iris (Accessory) HQE—Instrument, Vitreous Aspiration and Cutting, AC-Powered HKP—Instrument, Vitreous Aspiration and Cutting, Battery-Powered MLZ—Vitrectomy, Instrument Cutter
OP	886.4670	Phacofragmentation System HQC—Unit, Phacofragmentation
SU	878.4580	Surgical Lamp HBI—Illuminator, Fiberoptic, Surgical Field FTF—Illuminator, Nonremote FTG—Illuminator, Remote HJE—Lamp, Fluorescein, AC-Powered FQP—Lamp, Operating-Room FTD—Lamp, Surgical GBC—Lamp, Surgical, Incandescent FTA—Light, Surgical, Accessories FSZ—Light, Surgical, Carrier FSY—Light, Surgical, Ceiling Mounted FSX—Light, Surgical, Connector FSW—Light, Surgical, Endoscopic FST—Light, Surgical, Fiberoptic FSS—Light, Surgical, Floor Standing

Table 2.—Class II Medical Devices Included in Scope of Product Coverage at Beginning of Transition Period (United States to develop guidance documents identifying U.S. requirements and European Community (EC) to identify standards needed to meet EC requirements)[1]—Continued

Panel	21 CFR Section No.	Regulation Name
		Product Code—Device Name
		FSQ—Light, Surgical, Instrument
NE	882.5890	Transcutaneous Electrical Nerve Stimulator for Pain Relief GZJ—Stimulator, Nerve, Transcutaneous, For Pain Relief
		Noninvasive Blood Pressure Measurement Devices:
CV	870.1120	Blood Pressure Cuff DXQ—Cuff, Blood-Pressure
CV	870.1130	Noninvasive Blood Pressure Measurement System (except nonoscillometric) DXN—System, Measurement, Blood-Pressure, Noninvasive
HO	880.6880	Steam Sterilizer (greater than 2 cubic feet) FLE—Sterilizer, Steam
Clinical Thermometers:		
HO	880.2910	Clinical Electronic Thermometer (except tympanic or pacifier) FLL—Thermometer, Electronic, Clinical
AN	868.5630	Nebulizer CAF—Nebulizer (Direct Patient Interface)
AN	868.5925	Powered Emergency Ventilator
Hypodermic Needles and Syringes (except antistick and self-destruct):		
HO	880.5570	Hypodermic Single Lumen Needle MMK—Container, Sharpes FMI—Needle, Hypodermic, Single Lumen MHC—Port, Intraosseous, Implanted
HO	880.5860	Piston Syringe FMF—Syringe, Piston
OR	888.3020	Intramedullary Fixation Rod HSB—ROD, Fixation, Intramedullary and Accessories
External Fixators (except devices with no external components):		
OR	888.3030	Single/Multiple Component Metallic Bone Fixation Appliances and Accessories KTT—Appliance, Fixation, Nail/Blade/Plate Combination, Multiple Component
OR	888.3040	Smooth or Threaded Metallic Bone Fixation Fastener JEC—Component, Traction, Invasive HTY—Pin, Fixation, Smooth JDW—Pin, Fixation, Threaded
Selected Dental Materials:		
DE	872.3060	Gold-Based Alloys and Precious Metal Alloys for Clinical Use EJT—Alloy, Gold Based, For Clinical Use EJS—Alloy, Precious Metal, For Clinical Use
DE	872.3200	Resin Tooth Bonding Agent KLE—Agent, Tooth Bonding, Resin
DE	872.3275	Dental Cement EMA—Cement, Dental EMB—Zinc Oxide Eugenol
DE	872.3660	Impression Material ELW—Material, Impression
DE	872.3690	Tooth Shade Resin Material EBF—Material, Tooth Shade, Resin
DE	872.3710	Base Metal Alloy EJH—Metal, Base
Latex Condoms:		
OB	884.5300	Condom HIS—Condom

[1]Descriptive information on product codes, panel codes, and other medical device identifiers may be viewed on FDA's Internet Web Site at ''http://www.fda.gov/cdrh/prodcode.html''.

Table 3.—Medical Devices for Possible Inclusion in Scope of Product Coverage During Operational Period[1]

Product Family	21 CFR Section No	Device Name	Tier
Anesthesiology Panel			
Anesthesia Devices	868.5160	Gas machine for anesthesia or analgesia	2
	868.5270	Breathing system heater	2

Table 3.—Medical Devices for Possible Inclusion in Scope of Product Coverage During Operational Period[1]—Continued

Product Family	21 CFR Section No	Device Name	Tier
	868.5440	Portable oxygen generator	2
	868.5450	Respiratory gas humidifier	2
	868.5630	Nebulizer	2
	868.5710	Electrically powered oxygen tent	2
	868.5880	Anesthetic vaporizer	2
Gas Analyser	868.1040	Powered Algesimeter	2
	868.1075	Argon gas analyzer	2
	868.1400	Carbon dioxide gas analyzer	2
	868.1430	Carbon monoxide gas analyzer	2
	868.1500	Enflurane gas analyzer	2
	868.1620	Halothane gas analyzer	2
	868.1640	Helium gas analyzer	2
	868.1670	Neon gas analyzer	2
	868.1690	Nitrogen gas analyzer	2
	868.1700	Nitrous oxide gas analyzer	2
	868.1720	Oxygen gas analyzer	2
	868.1730	Oxygen uptake computer	2
Peripheral Nerve Stimulators	868.2775	Electrical peripheral nerve stimulator	2
Respiratory Monitoring	868.1750	Pressure plethysmograph	2
	868.1760	Volume plethysmograph	2
	868.1780	Inspiratory airway pressure meter	2
	868.1800	Rhinoanemometer	2
	868.1840	Diagnostic spirometer	2
	868.1850	Monitoring spirometer	2
	868.1860	Peak-flow meter for spirometry	2
	868.1880	Pulmonary-function data calculator	2
	868.1890	Predictive pulmonary-function value calculator	2
	868.1900	Diagnostic pulmonary-function interpretation calculator	2
	868.2025	Ultrasonic air embolism monitor	2
	868.2375	Breathing frequency monitor (except apnea detectors)	2
	868.2480	Cutaneous carbon dioxide ($PcCO_2$) monitor	2
	868.2500	Cutaneous oxygen monitor (for an infant not under gas anesthesia)	2
	868.2550	Pneumotachomometer	2
	868.2600	Airway pressure monitor	2
	868.5665	Powered percussor	2
	868.5690	Incentive spirometer	2
Ventilator	868.5905	Noncontinuous ventilator (IPPB)	2
	868.5925	Powered emergency ventilator	2
	868.5935	External negative pressure ventilator	2
	868.5895	Continuous ventilator	2
	868.5955	Intermittent mandatory ventilation attachment	2
	868.6250	Portable air compressor	2
Cardiovascular Panel			
Cardiovascular Diagnostic	870.1425	Programmable diagnostic computer	2
	870.1450	Densitometer	2
	870.2310	Apex cardiograph (vibrocardiograph)	2
	870.2320	Ballistocardiograph	2
	870.2340	Electrocardiograph	2
	870.2350	Electrocardiograph lead switching adaptor	1
	870.2360	Electrocardiograph electrode	2
	870.2370	Electrocardiograph surface electrode tester	2
	870.2400	Vectorcardiograph	1
	870.2450	Medical cathode-ray tube display	1
	870.2675	Oscillometer	2
	870.2840	Apex cardiographic transducer	2
	870.2860	Heart sound transducer	2

Table 3.—Medical Devices for Possible Inclusion in Scope of Product Coverage During Operational Period[1]—Continued

Product Family	21 CFR Section No	Device Name	Tier
Cardiovascular Monitoring		Valve, pressure relief, cardiopulmonary bypass	
	870.1100	Blood pressure alarm	2
	870.1110	Blood pressure computer	2
	870.1120	Blood pressure cuff	2
	870.1130	Noninvasive blood pressure measurement system	2
	870.1140	Venous blood pressure manometer	2
	870.1220	Electrode recording catheter or electrode recording probe	2
	870.1270	Intracavitary phonocatheter system	2
	870.1875	Stethoscope (electronic)	2
	870.2050	Biopotential amplifier and signal conditioner	2
	870.2060	Transducer signal amplifier and conditioner	2
	870.2100	Cardiovascular blood flow-meter	2
	870.2120	Extravascular blood flow probe	2
	870.2300	Cardiac monitor (including cardiotachometer and rate alarm)	2
	870.2700	Oximeter	2
	870.2710	Ear oximeter	2
	870.2750	Impedance phlebograph	2
	870.2770	Impedance plethysmograph	2
	870.2780	Hydraulic, pneumatic, or photo-electric plethysmographs	2
	870.2850	Extravascular blood pressure transducer	2
	870.2870	Catheter tip pressure transducer	2
	870.2880	Ultrasonic transducer	2
	870.2890	Vessel occlusion transducer	2
	870.2900	Patient transducer and electrode cable (including connector)	2
	870.2910	Radiofrequency physiological signal transmitter and receiver	2
	870.2920	Telephone electrocardiograph transmitter and receiver	2
	870.4205	Cardiopulmonary bypass bubble detector	2
	870.4220	Cardiopulmonary bypass heart-lung machine console	2
	870.4240	Cardiovascular bypass heat exchanger	2
	870.4250	Cardiopulmonary bypass temperature controller	2
	870.4300	Cardiopulmonary bypass gas control unit	2
	870.4310	Cardiopulmonary bypass coronary pressure gauge	2
	870.4330	Cardiopulmonary bypass on-line blood gas monitor	2
	870.4340	Cardiopulmonary bypass level sensing monitor and/or control	2
	870.4370	Roller-type cardiopulmonary bypass blood pump	2
	870.4380	Cardiopulmonary bypass pump speed control	2
	870.4410	Cardiopulmonary bypass in-line blood gas sensor	2
Cardiovascular Therapeutic	870.5050	Patient care suction apparatus	2
	870.5900	Thermal regulation system	2
Defibrillator	870.5300	DC-defibrillator (including paddles)	2
	870.5325	Defibrillator tester	2
Echocardiograph	870.2330	Echocardiograph	2
Pacemaker & Accessories	870.1750	External programmable pacemaker pulse generator	2
	870.3630	Pacemaker generator function analyzer	2

Table 3.—Medical Devices for Possible Inclusion in Scope of Product Coverage During Operational Period[1]—Continued

Product Family	21 CFR Section No	Device Name	Tier
	870.3640	Indirect pacemaker generator function analyzer	2
	870.3720	Pacemaker electrode function tester	2
Miscellaneous	870.1800	Withdrawal-infusion pump	2
	870.2800	Medical magnetic tape recorder	2
	None	Batteries, rechargeable, class II devices	
Dental Panel			
Dental Equipment	872.1720	Pulp tester	2
	872.1740	Caries detection device	2
	872.4120	Bone cutting instrument and accessories	2
	872.4465	Gas-powered jet injector	2
	872.4475	Spring-powered jet injector	2
	872.4600	Intraoral ligature and wire lock	2
	872.4840	Rotary scaler	2
	872.4850	Ultrasonic scaler	2
	872.4920	Dental electrosurgical unit and accessories	2
	872.6070	Ultraviolet activator for polymerization	2
	872.6350	Ultraviolet detector	2
Dental Material	872.3050	Amalgam alloy	2
	872.3060	Gold-based alloys and precious metal alloys for clinical use	2
	872.3200	Resin tooth bonding agent	2
	872.3250	Calcium hydroxide cavity liner	2
	872.3260	Cavity varnish	2
	872.3275	Dental cement (other than zinc oxide-eugenol)	2
	872.3300	Hydrophilic resin coating for dentures	2
	872.3310	Coating material for resin fillings	2
	872.3590	Preformed plastic denture tooth	2
	872.3660	Impression material	2
	872.3690	Tooth shade resin material	2
	872.3710	Base metal alloy	2
	872.3750	Bracket adhesive resin and tooth conditioner	2
	872.3760	Denture relining, repairing, or re-basing resin	2
	872.3765	Pit and fissure sealant and conditioner	2
	872.3770	Temporary crown and bridge resin	2
	872.3820	Root canal filling resin (other than chloroform use)	2
	872.3920	Porcelain tooth	2
Dental X-ray	872.1800	Extraoral source x-ray system	2
	872.1810	Intraoral source x-ray system	2
Dental Implants	872.4880	Intraosseous fixation screw or wire	2
	872.3890	Endodontic stabilizing splint	2
Orthodontic	872.5470	Orthodontic plastic bracket	2
Ear/Nose/Throat Panel			
Diagnostic Equipment	874.1050	Audiometer	2
	874.1090	Auditory impedance tester	2
	874.1120	Electronic noise generator for audiometric testing	2
	874.1325	Electroglottograph	2
	874.1820	Surgical nerve stimulator/locator	2
Hearing Aids	874.3300	Hearing aid (for bone-conduction)	2
	874.3310	Hearing aid calibrator and analysis system	2
	874.3320	Group hearing aid or group auditory trainer	2
	874.3330	Master hearing aid	2
Surgical Equipment	874.4250	Ear, nose, and throat electric or pneumatic surgical drill	1
	874.4490	Argon laser for otology, rhinology, and laryngology	2

Table 3.—Medical Devices for Possible Inclusion in Scope of Product Coverage During Operational Period[1]—Continued

Product Family	21 CFR Section No	Device Name	Tier
	874.4500	Ear, nose, and throat microsurgical carbon dioxide laser	2
Gastroenterology/Urology Panel			
Endoscope (including angioscopes, laparscopes, ophthalmic endoscopes)	876.1500	Endoscope and accessories	2
	876.4300	Endoscopic electrosurgical unit and accessories	2
Gastroenterology	876.1725	Gastrointestinal motility monitoring system	1
Hemodialysis	876.5600	Sorbent regenerated dialysate delivery system for hemodialysis	2
	876.5630	Peritoneal dialysis system and accessories	2
	876.5665	Water purification system for hemodialysis	2
	876.5820	Hemodialysis system and accessories	2
	876.5830	Hemodialyzer with disposable insert (kiil-type)	2
Lithotriptor	876.4500	Mechanical lithotriptor	2
Urology Equipment	876.1620	Urodynamics measurement system	2
	876.5320	Nonimplanted electrical continence device	2
	876.5880	Isolated kidney perfusion and transport system and accessories	2
General Hospital Panel			
Infusion Pumps and Systems	880.2420	Electronic monitor for gravity flow infusion systems	2
	880.2460	Electrically powered spinal fluid pressure monitor	2
	880.5430	Nonelectrically powered fluid injector	2
	880.5725	Infusion pump	2
Neonatal Incubators	880.5400	Neonatal incubator	2
	880.5410	Neonatal transport incubator	2
	880.5700	Neonatal phototherapy unit	2
Piston Syringes	880.5570	Hypodermic single lumen needle	1
	880.5860	Piston syringe (except antistick)	1
	880.6920	Syringe needle introducer	2
Miscellaneous	880.2910	Clinical electronic thermometer	2
	880.2920	Clinical mercury thermometer	2
	880.5100	AC-powered adjustable hospital bed	1
	880.5500	AC-powered patient lift	2
	880.6880	Steam sterilizer (greater than 2 cubic feet)	2
Neurology Panel			
	882.1020	Rigidity analyzer	2
	882.1610	Alpha monitor	2
Neuro-Diagnostic	882.1320	Cutaneous electrode	2
	882.1340	Nasopharyngeal electrode	2
	882.1350	Needle electrode	2
	882.1400	Electroencephalograph	2
	882.1460	Nystagmograph	2
	882.1480	Neurological endoscope	2
	882.1540	Galvanic skin response measurement device	2
	882.1550	Nerve conduction velocity measurement device	2
	882.1560	Skin potential measurement device	2
	882.1570	Powered direct-contact temperature measurement device	2
	882.1620	Intracranial pressure monitoring device	2
	882.1835	Physiological signal amplifier	2
	882.1845	Physiological signal conditioner	2

Table 3.—Medical Devices for Possible Inclusion in Scope of Product Coverage During Operational Period[1]—Continued

Product Family	21 CFR Section No	Device Name	Tier
	882.1855	Electroencephalogram (EEG) telemetry system	2
	882.5050	Biofeedback device	2
Echoencephalography	882.1240	Echoencephalograph	2
RPG	882.4400	Radiofrequency lesion generator	2
Neuro Surgery	none	Electrode, spinal epidural	2
	882.4305	Powered compound cranial drills, burrs, trephines, and their accessories	2
	882.4310	Powered simple cranial drills burrs, trephines, and their accessories	2
	882.4360	Electric cranial drill motor	2
	882.4370	Pneumatic cranial drill motor	2
	882.4560	Stereotaxic instrument	2
	882.4725	Radiofrequency lesion probe	2
	882.4845	Powered rongeur	2
	882.5500	Lesion temperature monitor	2
Stimulators	882.1870	Evoked response electrical stimulator	2
	882.1880	Evoked response mechanical stimulator	2
	882.1890	Evoked response photic stimulator	2
	882.1900	Evoked response auditory stimulator	2
	882.1950	Tremor transducer	2
	882.5890	Transcutaneous electrical nerve stimulator for pain relief	2
Obstetrics/Gynecology Panel			
Fetal Monitoring	884.1660	Transcervical endoscope (amnioscope) and accessories	2
	884.1690	Hysteroscope and accessories (for performance standards)	2
	884.2225	Obstetric-gynecologic ultrasonic imager	2
	884.2600	Fetal cardiac monitor	2
	884.2640	Fetal phonocardiographic monitor and accessories	2
	884.2660	Fetal ultrasonic monitor and accessories	2
	884.2675	Fetal scalp circular (spiral) electrode and applicator	1
	884.2700	Intrauterine pressure monitor and accessories	2
	884.2720	External uterine contraction monitor and accessories	2
	884.2740	Perinatal monitoring system and accessories	2
	884.2960	Obstetric ultrasonic transducer and accessories	2
Gynecological Surgery Equipment	884.1720	Gynecologic laparoscope and accessories	2
	884.4160	Unipolar endoscopic coagulator-cutter and accessories	2
	884.4550	Gynecologic surgical laser	2
	884.4120	Gynecologic electrocautery and accessories	2
	884.5300	Condom	2
Ophthalmic Implants	886.3320	Eye sphere implant	2
Contact Lens	886.1385	Polymethylmethacrylate (PMMA) diagnostic contact lens	2
	886.5916	Rigid gas permeable contact lens (daily wear only)	2
Diagnostic Equipment	886.1120	Opthalmic camera	1
	886.1220	Corneal electrode	1
	886.1250	Euthyscope (AC-powered)	1
	886.1360	Visual field laser instrument	1
	886.1510	Eye movement monitor	1
	886.1570	Ophthalmoscope	1
	886.1630	AC-powered photostimulator	1
	886.1640	Ophthalmic preamplifier	1

Table 3.—Medical Devices for Possible Inclusion in Scope of Product Coverage During Operational Period[1]—Continued

Product Family	21 CFR Section No	Device Name	Tier
	886.1670	Ophthalmic isotope uptake probe	2
	886.1780	Retinoscope (AC-powered device)	1
	886.1850	AC-powered slit lamp biomicroscope	1
	886.1930	Tonometer and accessories	2
	886.1945	Transilluminator (AC-powered device)	1
	886.3130	Ophthalmic conformer	2
(Diagnostic/Surgery Equipment)	886.4670	Phacofragmentation system	2
Ophthalmic Implants	886.3340	Extraocular orbital implant	2
	886.3800	Scleral shell	2
Surgical Equipment	880.5725	Infusion pump (performance standards)	2
	886.3100	Ophthalmic tantalum clip	2
	886.3300	Absorbable implant (scleral buckling method)	2
	886.4100	Radiofrequency electrosurgical cautery apparatus	2
	886.4115	Thermal cautery unit	2
	886.4150	Vitreous aspiration and cutting instrument	2
	886.4170	Cryophthalmic unit	2
	886.4250	Ophthalmic electrolysis unit (AC-powered device)	1
	886.4335	Operating headlamp (AC-powered device)	1
	886.4390	Ophthalmic laser	2
	886.4392	Nd:YAG laser for posterior capsulotomy	2
	886.4400	Electronic metal locator	1
	886.4440	AC-powered magnet	1
	886.4610	Ocular pressure applicator	2
	886.4690	Ophthalmic photocoagulator	2
	886.4790	Ophthalmic sponge	2
	886.5100	Ophthalmic beta radiation source	2
	none	Ophthalmoscopes, replacement batteries, hand-held	1
Orthopedic Panel			
Implants	888.3010	Bone fixation cerclage	2
	888.3020	Intramedullary fixation rod	2
	888.3030	Single/multiple component metallic bone fixation appliances and accessories	2
	888.3040	Smooth or threaded metallic bone fixation fastener	2
	888.3050	Spinal interlaminal fixation orthosis	2
	888.3060	Spinal intervertebral body fixation orthosis	2
Surgical Equipment	888.1240	AC-powered dynamometer	2
	888.4580	Sonic surgical instrument and accessories/attachments	2
	none	Accessories, fixation, spinal interlaminal	2
	none	Accessories, fixation, spinal intervertebral body	2
	none	Monitor, pressure, intracompartmental	1
	none	Orthosis, fixation, spinal intervertebral fusion	2
	none	Orthosis, spinal pedicle fixation	
	none	System, cement removal extraction	1
Physical Medicine Panel			
Diagnostic Equipment or (Therapy) Therapeutic Equipment	890.1225	Chronaximeter	2
	890.1375	Diagnostic electromyograph	2
	890.1385	Diagnostic electromyograph needle electrode	2

Table 3.—Medical Devices for Possible Inclusion in Scope of Product Coverage During Operational Period[1]—Continued

Product Family	21 CFR Section No	Device Name	Tier
	890.1450	Powered reflex hammer	2
	890.1850	Diagnostic muscle stimulator	2
or (Therapy)	890.5850	Powered muscle stimulator	2
Therapeutic Equipment	890.5100	Immersion hydrobath	2
	890.5110	Paraffin bath	2
	890.5500	Infrared lamp	2
	890.5720	Water circulating hot or cold pack	2
	890.5740	Powered heating pad	2
Radiology Panel			
MRI	892.1000	Magnetic resonance diagnostic device	2
Ultrasound Diagnostic	884.2660	Fetal ultrasonic monitor and accessories	2
	892.1540	Nonfetal ultrasonic monitor	
	892.1560	Ultrasonic pulsed echo imaging system	2
	892.1570	Diagnostic ultrasonic transducer	2
	892.1550	Ultrasonic pulsed doppler imaging system	
Angiographic	892.1600	Angiographic x-ray system	2
Diagnostic X-Ray	892.1610	Diagnostic x-ray beam-limiting device	2
	892.1620	Cine or spot fluorographic x-ray camera	2
	892.1630	Electrostatic x-ray imaging system	2
	892.1650	Image-intensified fluoroscopic x-ray system	2
	892.1670	Spot film device	2
	892.1680	Stationary x-ray system	2
	892.1710	Mammographic x-ray system	2
	892.1720	Mobile x-ray system	2
	892.1740	Tomographic x-ray system	1
	892.1820	Pneumoencephalographic chair	2
	892.1850	Radiographic film cassette	1
	892.1860	Radiographic film/cassette changer	1
	892.1870	Radiographic film/cassette changer programmer	2
	892.1900	Automatic radiographic film processor	2
	892.1980	Radiologic table	1
CT Scanner	892.1750	Computed tomography x-ray system	2
Radiation Therapy	892.5050	Medical charged-particle radiation therapy system	2
	892.5300	Medical neutron radiation therapy system	2
	892.5700	Remote controlled radionuclide applicator system	2
	892.5710	Radiation therapy beam-shaping block	2
	892.5730	Radionuclide brachytherapy source	2
	892.5750	Radionuclide radiation therapy system	2
	892.5770	Powered radiation therapy patient support assembly	2
	892.5840	Radiation therapy simulation system	2
	892.5930	Therapeutic x-ray tube housing assembly	1
Nuclear Medicine	892.1170	Bone densitometer	2
	892.1200	Emission computed tomography system	2
	892.1310	Nuclear tomography system	1
	892.1390	Radionuclide rebreathing system	2
General/Plastic Surgery Panel			
Surgical Lamps	878.4630	Ultraviolet lamp for dermatologic disorders	2
	890.5500	Infrared lamp	2
	878.4580	Surgical lamp	2

Table 3.—Medical Devices for Possible Inclusion in Scope of Product Coverage During Operational Period[1]—Continued

Product Family		21 CFR Section No	Device Name	Tier
Electrosurgical Equipment	Cutting	878.4810	Laser surgical instrument for use in general and plastic surgery and in dermatology	2
		878.4400	Electrosurgical cutting and coagulation device and accessories	2
Miscellaneous		878.4780	Powered suction pump	2

[1]Descriptive information on product codes, panel codes, and other medical device identifiers may be viewed on FDA's Internet Web Site at ''http://www.fda.gov/cdrh/prodcode.html''.

Appendix C of Subpart B [Reserved].

Appendix D of Subpart B [Reserved].

Appendix E of Subpart B [Reserved].

Appendix F of Subpart B [Reserved].

Subpart C—''Framework'' Provisions

§ 26.60 Definitions.

(a) The following terms and definitions shall apply to this subpart only:

(1) *Designating Authority* means a body with power to designate, monitor, suspend, remove suspension of, or withdraw conformity assessment bodies as specified under this part.

(2) *Designation* means the identification by a designating authority of a conformity assessment body to perform conformity assessment procedures under this part.

(3) *Regulatory Authority* means a government agency or entity that exercises a legal right to control the use or sale of products within a party's jurisdiction and may take enforcement action to ensure that products marketed within its jurisdiction comply with legal requirements.

(b) Other terms concerning conformity assessment used in this part shall have the meaning given elsewhere in this part or in the definitions contained in ''Guide 2: Standardization and Related Activities—General Vocabulary of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC)'' (ISO/IEC Guide 2) (1996 edition), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the International Organization for Standardization, 1, rue de Varembé, Case postale 56, CH–1211 Genève 20, Switzerland, or on the Internet at ''http://www.iso.ch'' or may be examined at the Food and Drug Administration's Medical Library, 5600 Fishers Lane, rm. 11B–40, Rockville, MD 20857, or the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC. In the event of an inconsistency between the ISO/IEC Guide 2 and definitions in this part, the definitions in this part shall prevail.

§ 26.61 Purpose of this part.

This part specifies the conditions by which each party will accept or recognize results of conformity assessment procedures, produced by the other party's conformity assessment bodies (CAB's) or authorities, in assessing conformity to the importing party's requirements, as specified on a sector-specific basis in subparts A and B of this part, and to provide for other related cooperative activities. The objective of such mutual recognition is to provide effective market access throughout the territories of the parties with regard to conformity assessment for all products covered under this part. If any obstacles to such access arise, consultations will promptly be held. In the absence of a satisfactory outcome of such consultations, the party alleging its market access has been denied may, within 90 days of such consultation, invoke its right to terminate the ''Agreement on Mutual Recognition Between the United States of America and the European Community,'' from which this part is derived, in accordance with § 26.80.

§ 26.62 General obligations.

(a) The United States shall, as specified in subparts A and B of this part, accept or recognize results of specified procedures, used in assessing conformity to specified legislative, regulatory, and administrative provisions of the United States, produced by the other party's conformity assessment bodies (CAB's) and/or authorities.

(b) The European Community (EC) and its Member States shall, as specified in subparts A and B of this part, accept or recognize results of specified procedures, used in assessing conformity to specified legislative, regulatory, and administrative provisions of the EC and its Member States, produced by the other party's CAB's and/or authorities.

(c) Where sectoral transition arrangements have been specified in subparts A and B of this part, the obligations in paragraphs (a) and (b) of this section will apply following the successful completion of those sectoral transition arrangements, with the understanding that the conformity assessment procedures utilized assure conformity to the satisfaction of the receiving party, with applicable legislative, regulatory, and administrative provisions of that party, equivalent to the assurance offered by the receiving party's own procedures.

§ 26.63 General coverage of this part.

(a) This part applies to conformity assessment procedures for products and/or processes and to other related cooperative activities as described in this part.

(b) Subparts A and B of this part may include:

(1) A description of the relevant legislative, regulatory, and administrative provisions pertaining to the conformity assessment procedures and technical regulations;

(2) A statement on the product scope and coverage;

(3) A list of designating authorities;

(4) A list of agreed conformity assessment bodies (CAB's) or authorities or a source from which to obtain a list of such bodies or authorities and a statement of the scope of the conformity assessment procedures for which each has been agreed;

(5) The procedures and criteria for designating the CAB's;

(6) A description of the mutual recognition obligations;

(7) A sectoral transition arrangement;

(8) The identity of a sectoral contact point in each party's territory; and

(9) A statement regarding the establishment of a Joint Sectoral Committee.

(c) This part shall not be construed to entail mutual acceptance of standards or technical regulations of the parties and, unless otherwise specified in subpart A or B of this part, shall not entail the

mutual recognition of the equivalence of standards or technical regulations.

§ 26.64 Transitional arrangements.

The parties agree to implement the transitional commitments on confidence building as specified in subparts A and B of this part.

(a) The parties agree that each sectoral transitional arrangement shall specify a time period for completion.

(b) The parties may amend any transitional arrangement by mutual agreement.

(c) Passage from the transitional phase to the operational phase shall proceed as specified in subparts A and B of this part, unless either party documents that the conditions provided in such subpart for a successful transition are not met.

§ 26.65 Designating authorities.

The parties shall ensure that the designating authorities specified in subpart B of this part have the power and competence in their respective territories to carry out decisions under this part to designate, monitor, suspend, remove suspension of, or withdraw conformity assessment bodies (CAB's).

§ 26.66 Designation and listing procedures.

The following procedures shall apply with regard to the designation of conformity assessment bodies (CAB's) and the inclusion of such bodies in the list of CAB's in subpart B of this part:

(a) The designating authority identified in subpart B of this part shall designate CAB's in accordance with the procedures and criteria set forth in subpart B of this part;

(b) A party proposing to add a CAB to the list of such bodies in subpart B of this part shall forward its proposal of one or more designated CAB's in writing to the other party with a view to a decision by the Joint Committee;

(c) Within 60 days following receipt of the proposal, the other party shall indicate its position regarding either its confirmation or its opposition. Upon confirmation, the inclusion in subpart B of this part of the proposed CAB or CAB's shall take effect; and

(d) In the event that the other party contests on the basis of documented evidence the technical competence or compliance of a proposed CAB, or indicates in writing that it requires an additional 30 days to more fully verify such evidence, such CAB shall not be included on the list of CAB's in subpart B of this part. In this instance, the Joint Committee may decide that the body concerned be verified. After the completion of such verification, the proposal to list the CAB in subpart B may be resubmitted to the other party.

§ 26.67 Suspension of listed conformity assessment bodies.

The following procedures shall apply with regard to the suspension of a conformity assessment body (CAB) listed in subpart B of this part.

(a) A party shall notify the other party of its contestation of the technical competence or compliance of a CAB listed in subpart B of this part and the contesting party's intent to suspend such CAB. Such contestation shall be exercised when justified in an objective and reasoned manner in writing to the other party;

(b) The CAB shall be given prompt notice by the other party and an opportunity to present information in order to refute the contestation or to correct the deficiencies which form the basis of the contestation;

(c) Any such contestation shall be discussed between the parties in the Joint Sectoral Committee described in subpart B of this part. If there is no Joint Sectoral Committee, the contesting party shall refer the matter directly to the Joint Committee. If agreement to suspend is reached by the Joint Sectoral Committee or, if there is no Joint Sectoral Committee, by the Joint Committee, the CAB shall be suspended;

(d) Where the Joint Sectoral Committee or Joint Committee decides that verification of technical competence or compliance is required, it shall normally be carried out in a timely manner by the party in whose territory the body in question is located, but may be carried out jointly by the parties in justified cases;

(e) If the matter has not been resolved by the Joint Sectoral Committee within 10 days of the notice of contestation, the matter shall be referred to the Joint Committee for a decision. If there is no Joint Sectoral Committee, the matter shall be referred directly to the Joint Committee. If no decision is reached by the Joint Committee within 10 days of the referral to it, the CAB shall be suspended upon the request of the contesting party;

(f) Upon the suspension of a CAB listed in subpart B of this part, a party is no longer obligated to accept or recognize the results of conformity assessment procedures performed by that CAB subsequent to suspension. A party shall continue to accept the results of conformity assessment procedures performed by that CAB prior to suspension, unless a regulatory authority of the party decides otherwise based on health, safety or environmental considerations or failure to satisfy other requirements within the scope of subpart B of this part; and

(g) The suspension shall remain in effect until agreement has been reached by the parties upon the future status of that body.

§ 26.68 Withdrawal of listed conformity assessment bodies.

The following procedures shall apply with regard to the withdrawal from subpart B of this part of a conformity assessment body (CAB):

(a) A party proposing to withdraw a CAB listed in subpart B of this part shall forward its proposal in writing to the other party;

(b) Such CAB shall be promptly notified by the other party and shall be provided a period of at least 30 days from receipt to provide information in order to refute or to correct the deficiencies which form the basis of the proposed withdrawal;

(c) Within 60 days following receipt of the proposal, the other party shall indicate its position regarding either its confirmation or its opposition. Upon confirmation, the withdrawal from the list in subpart B of this part of the CAB shall take effect;

(d) In the event the other party opposes the proposal to withdraw by supporting the technical competence and compliance of the CAB, the CAB shall not at that time be withdrawn from the list of CAB's in subpart B of this part. In this instance, the Joint Sectoral Committee or the Joint Committee may decide to carry out a joint verification of the body concerned. After the completion of such verification, the proposal for withdrawal of the CAB may be resubmitted to the other party; and

(e) Subsequent to the withdrawal of a CAB listed in subpart B of this part, a party shall continue to accept the results of conformity assessment procedures performed by that CAB prior to withdrawal, unless a regulatory authority of the party decides otherwise based on health, safety, and environmental considerations or failure to satisfy other requirements within the scope of subpart B of this part.

§ 26.69 Monitoring of conformity assessment bodies.

The following shall apply with regard to the monitoring of conformity assessment bodies (CAB's) listed in subpart B of this part:

(a) Designating authorities shall assure that their CAB's listed in subpart B of this part are capable and remain capable of properly assessing conformity of products or processes, as applicable, and as covered in subpart B of this part. In this regard, designating authorities shall maintain, or cause to maintain, ongoing surveillance over

their CAB's by means of regular audit or assessment;

(b) The parties undertake to compare methods used to verify that the CAB's listed in subpart B of this part comply with the relevant requirements of subpart B of this part. Existing systems for the evaluation of CAB's may be used as part of such comparison procedures;

(c) Designating authorities shall consult as necessary with their counterparts, to ensure the maintenance of confidence in conformity assessment procedures. With the consent of both parties, this consultation may include joint participation in audits/inspections related to conformity assessment activities or other assessments of CAB's listed in subpart B of this part; and

(d) Designating authorities shall consult, as necessary, with the relevant regulatory authorities of the other party to ensure that all technical requirements are identified and are satisfactorily addressed.

§ 26.70 Conformity assessment bodies.

Each party recognizes that the conformity assessment bodies (CAB's) listed in subpart B of this part fulfill the conditions of eligibility to assess conformity in relation to its requirements as specified in subpart B of this part. The parties shall specify the scope of the conformity assessment procedures for which such bodies are listed.

§ 26.71 Exchange of information.

(a) The parties shall exchange information concerning the implementation of the legislative, regulatory, and administrative provisions identified in subparts A and B of this part.

(b) Each party shall notify the other party of legislative, regulatory, and administrative changes related to the subject matter of this part at least 60 days before their entry into force. Where considerations of safety, health or environmental protection require more urgent action, a party shall notify the other party as soon as practicable.

(c) Each party shall promptly notify the other party of any changes to its designating authorities and/or conformity assessment bodies (CAB's).

(d) The parties shall exchange information concerning the procedures used to ensure that the listed CAB's under their responsibility comply with the legislative, regulatory, and administrative provisions outlined in subpart B of this part.

(e) Regulatory authorities identified in subparts A and B of this part shall consult as necessary with their counterparts, to ensure the maintenance of confidence in conformity assessment procedures and to ensure that all technical requirements are identified and are satisfactorily addressed.

§ 26.72 Sectoral contact points.

Each party shall appoint and confirm in writing contact points to be responsible for activities under subparts A and B of this part.

§ 26.73 Joint Committee.

(a) A Joint Committee consisting of representatives of the United States and the European Community (EC) will be established. The Joint Committee shall be responsible for the effective functioning of the ''Agreement on Mutual Recognition Between the United States of America and the European Community,'' from which this part is derived.

(b) The Joint Committee may establish Joint Sectoral Committees comprised of appropriate regulatory authorities and others deemed necessary.

(c) The United States and the EC shall each have one vote in the Joint Committee. The Joint Committee shall make its decisions by unanimous consent. The Joint Committee shall determine its own rules and procedures.

(d) The Joint Committee may consider any matter relating to the effective functioning of that agreement. In particular it shall be responsible for:

(1) Listing, suspension, withdrawal and verification of conformity assessment bodies (CAB's) in accordance with that agreement;

(2) Amending transitional arrangements in the sectoral annexes to that agreement;

(3) Resolving any questions relating to the application of that agreement not otherwise resolved in the respective Joint Sectoral Committees;

(4) Providing a forum for discussion of issues that may arise concerning the implementation of that agreement;

(5) Considering ways to enhance the operation of that agreement;

(6) Coordinating the negotiation of additional sectoral annexes to that agreement; and

(7) Considering whether to amend that agreement in accordance with § 26.80.

(e) When a party introduces new or additional conformity assessment procedures affecting a sectoral annex to that agreement, the parties shall discuss the matter in the Joint Committee with a view to bringing such new or additional procedures within the scope of that agreement and the relevant sectoral annex.

§ 26.74 Preservation of regulatory authority.

(a) Nothing in this part shall be construed to limit the authority of a party to determine, through its legislative, regulatory, and administrative measures, the level of protection it considers appropriate for safety; for protection of human, animal, or plant life or health; for the environment; for consumers; and otherwise with regard to risks within the scope of the applicable subpart A or B of this part.

(b) Nothing in this part shall be construed to limit the authority of a regulatory authority to take all appropriate and immediate measures whenever it ascertains that a product may:

(1) Compromise the health or safety of persons in its territory;

(2) Not meet the legislative, regulatory, or administrative provisions within the scope of the applicable subpart A or B of this part; or

(3) Otherwise fail to satisfy a requirement within the scope of the applicable subpart A or B of this part. Such measures may include withdrawing the products from the market, prohibiting their placement on the market, restricting their free movement, initiating a product recall, and preventing the recurrence of such problems, including through a prohibition on imports. If the regulatory authority takes such action, it shall inform its counterpart authority and the other party within 15 days of taking such action, providing its reasons.

§ 26.75 Suspension of recognition obligations.

Either party may suspend its obligations under subpart A or B of this part, in whole or in part, if:

(a) A party suffers a loss of market access for the party's products within the scope of subpart A or B of this part as a result of the failure of the other party to fulfill its obligations under this part;

(b) The adoption of new or additional conformity assessment requirements as referenced in § 26.73(e) results in a loss of market access for the party's products within the scope of subpart B of this part because conformity assessment bodies (CAB's) designated by the party in order to meet such requirements have not been recognized by the party implementing the requirements; or

(c) The other party fails to maintain legal and regulatory authorities capable of implementing the provisions of this part.

§ 26.76 Confidentiality.

(a) Each party agrees to maintain, to the extent required under its laws, the confidentiality of information exchanged under this part.

(b) In particular, neither party shall disclose to the public, nor permit a conformity assessment body (CAB) to disclose to the public, information exchanged under this part that constitutes trade secrets, confidential commercial or financial information, or information that relates to an ongoing investigation.

(c) A party or a CAB may, upon exchanging information with the other party or with a CAB of the other party, designate the portions of the information that it considers to be exempt from disclosure.

(d) Each party shall take all precautions reasonably necessary to protect information exchanged under this part from unauthorized disclosure.

§ 26.77 Fees.

Each party shall endeavor to ensure that fees imposed for services under this part shall be commensurate with the services provided. Each party shall ensure that, for the sectors and conformity assessment procedures covered under this part, it shall charge no fees with respect to conformity assessment services provided by the other party.

§ 26.78 Agreements with other countries.

Except where there is written agreement between the parties, obligations contained in mutual recognition agreements concluded by either party with a party not a party to the agreement from which this part is derived (a third party) shall have no force and effect with regard to the other party in terms of acceptance of the results of conformity assessment procedures in the third party.

§ 26.79 Territorial application.

The agreement from which this part is derived shall apply, on the one hand, to the territories in which the Treaty establishing the European Community (EC) is applied, and under the conditions laid down in that Treaty and, on the other hand, to the territory of the United States.

§ 26.80 Entry into force, amendment, and termination.

(a) The ''Agreement on Mutual Recognition Between the United States of America and the European Community,'' from which this part is derived, including its sectoral annexes on telecommunication equipment, electromagnetic compatibility, electrical safety, recreational craft, pharmaceutical Good Manufacturing Practices (GMP) inspections, and medical devices shall enter into force on the first day of the second month following the date on which the parties have exchanged letters confirming the completion of their respective procedures for the entry into force of that agreement.

(b) That agreement including any sectoral annex may, through the Joint Committee, be amended in writing by the parties to that agreement. Those parties may add a sectoral annex upon the exchange of letters. Such annex shall enter into force 30 days following the date on which those parties have exchanged letters confirming the completion of their respective procedures for the entry into force of the sectoral annex.

(c) Either party to that agreement may terminate that agreement in its entirety or any individual sectoral annex thereof by giving the other party to that agreement 6-months notice in writing. In the case of termination of one or more sectoral annexes, the parties to that agreement will seek to achieve by consensus to amend that agreement, with a view to preserving the remaining Sectoral Annexes, in accordance with the procedures in this section. Failing such consensus, that agreement shall terminate at the end of 6 months from the date of notice.

(d) Following termination of that agreement in its entirety or any individual sectoral annex thereof, a party to that agreement shall continue to accept the results of conformity assessment procedures performed by conformity assessment bodies under that agreement prior to termination, unless a regulatory authority in the party decides otherwise based on health, safety and environmental considerations or failure to satisfy other requirements within the scope of the applicable sectoral annex.

§ 26.81 Final provisions.

(a) The sectoral annexes referred to in § 26.80(a), as well as any new sectoral annexes added pursuant to § 26.80(b), shall form an integral part of the ''Agreement on Mutual Recognition Between the United States of America and the European Community,'' from which this part is derived.

(b) For a given product or sector, the provisions contained in subparts A and B of this part shall apply in the first place, and the provisions of subpart C of this part in addition to those provisions. In the case of any inconsistency between the provisions of subpart A or B of this part and subpart C of this part, subpart A or B shall prevail, to the extent of that inconsistency.

(c) The agreement from which this part is derived shall not affect the rights and obligations of the parties under any other international agreement.

(d) In the case of subpart B of this part, the parties shall review the status of such subpart at the end of 3 years from the date described in § 26.80(a).

Dated: July 23, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–29609 Filed 11–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–98–8002]

Memorandum of Understanding Between the Food and Drug Administration and the Office of the United States Trade Representative

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the Office of the United States Trade Representative. The purpose of the MOU is to set forth the understandings and procedures which will guide their cooperative execution of the Joint Committee provisions of the Agreement on Mutual Recognition between the United States of America and the European Community.

DATES: The MOU became effective May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Merton Smith, Office of International Affairs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and understanding between FDA and other departments, agencies, and organizations shall be published in the **Federal Register** (except those between FDA and State and local government agencies that are cooperative work-sharing agreements), the agency is publishing notice of this MOU.

Dated: September 28, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

BILLING CODE 4160–01–F

225-98-8002

MEMORANDUM OF UNDERSTANDING REGARDING THE JOINT COMMITTEE UNDER THE FRAMEWORK AGREEMENT ON MUTUAL RECOGNITION BETWEEN THE UNITED STATES OF AMERICA AND THE EUROPEAN COMMUNITY

The United States and the European Community have negotiated an Agreement on Mutual Recognition (the "Agreement"), consisting of an umbrella agreement and several sectoral annexes. Products covered in the Sectoral Annex for Pharmaceutical Good Manufacturing Practices ("GMPs") and the Sectoral Annex on Medical Devices are regulated by the United States Food and Drug Administration ("FDA").

The umbrella agreement establishes a Joint Committee responsible for the effective functioning of the Agreement as a whole, and the sectoral annexes on pharmaceutical GMPs and medical devices establish separate Joint Sectoral Committees responsible for the operation of the respective sectoral annexes. Under the Agreement, issues discussed in the Joint Sectoral Committees regarding, among other things, equivalence determinations of authorities or conformity assessment bodies, may be referred to the Joint Committee.

In recognition of the relationship between the Agreement and FDA's core domestic statutory and regulatory responsibilities relating to protection of health and safety under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and related statutes, execution of which is committed to FDA, and in light of the United States Trade Representative's (USTR) role under section 141 of the Trade Act of 1974 and Reorganization Plan #3 of 1979, FDA and USTR set forth in this Memorandum of Understanding ("MOU") the understandings and procedures which will guide their cooperative execution of the Joint Committee provisions of the Agreement.

Upon establishment of the Joint Committee pursuant to Article 14 of the Agreement, USTR shall notify FDA of matters to be considered by the Joint Committee. Subject to arrangements with other agencies covered by the Agreement, USTR normally shall speak for and vote on behalf of the United States in the Joint Committee. A representative of FDA shall speak for and vote on behalf of the United States on any matter pertaining to FDA's statutory or regulatory authority. The representative of FDA shall also represent the USG on such matters in any other committees or bodies with similar functions established under the Agreement or its annexes.

Susan G. Esserman
General Counsel
United States Trade Representative

Date: April 16, 1998
April 16, 1998

Michael A. Friedman, M.D.
Lead Deputy Commissioner,
United States Food and Drug Administration

Date: 5/1/98
May 1, 1998

[FR Doc. 98–29608 Filed 11–5–98; 8:45 am]
BILLING CODE 4160–01–C

Friday
November 6, 1998

Part V

Department of Transportation

Federal Transit Administration

Job Access and Reverse Commute Competitive Grants; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Job Access and Reverse Commute Competitive Grants

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of funds; solicitation for grant applications.

SUMMARY: the U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) announces the first round of competitive grants under the Job Access and Reverse Commute grant program, authorized under Section 3037 of the Transportation Equity Act for the 21st Century (TEA–21). The Job Access and Reverse Commute grant program is intended to establish a regional approach to job access challenges through the establishment of a Regional Job Access and Reverse Commute Transportation Plan. Projects derived from this plan support the implementation of a variety of transportation services that may be needed to connect welfare recipients to jobs and related employment activities. All projects funded under the Job Access and Reverse Commute grant program must be derived from this regional plan. The Job Access and Reverse Commute Program has two major goals: to provide transportation services in urban, suburban and rural areas to assist welfare recipients and low income individuals access employment opportunities, and to increase collaboration among the transportation providers, human service agencies, employers, metropolitan planning organizations (MPOs), states, and affected communities and individuals.

While the projects must be planned in coordination with traditional transit authorities and transportation planning organizations, other interested organizations could take the lead in establishing the collaborative planning process or project application. The Job Access and Reverse Commute grant program will support projects that are implemented by a wide range of transportation providers. One key element is making the most efficient use of existing public, nonprofit and private transportation service providers.

A Job Access project is designed to transport welfare recipients and low-income individuals in urban, suburban, or rural areas to and from jobs and activities related to their employment. Job Access projects implement new transportation services or extend existing services to fill the gaps that exist in many areas between where welfare recipients and low-income persons live and employment opportunities. A Reverse Commute Project is designed to transport the general public from urban, suburban, and rural areas to suburban employment opportunities. Job Access and Reverse Commute grants funded under this program may not be used for planning or coordinating activities and cannot supplant existing sources of funding.

Funding for Job Access grants is authorized at $150 million annually. $50 million of this amount is guaranteed in fiscal year (FY) 1999. The guaranteed portion rises by $25 million a year, reaching the full authorized $150 million in FY 2003. Funding above the guaranteed level depends on congressional appropriations. No more than $10 million annually can be used for grants designated as Reverse Commute projects. In FY 1999, $75 million is available for the Job Access and Reverse Commute grant program. A 50 percent non-DOT match is required. Other Federal funds that are eligible to be expended for transportation can be used as part of the match. Applicants should submit projects that can be implemented quickly. The increasing funding levels provide ample opportunity for areas to submit future applications as Regional Job Access and Reverse Commute Transportation Plans are further developed.

This announcement describes the conditions under which applications will be received for the Job Access and Reverse Commute competitive grants program and how FTA will determine which applications it will fund. It includes all of the information needed to apply for Job Access and Reverse Commute competitive grants.

This announcement is available on the Internet on the U.S. Department of Transportation's FTA website at http://www.fta.dot.gov/wtw/. The website will also have commonly asked questions and answers. FTA will announce final selections on the website and in the **Federal Register**.

DATES: FTA will make funding commitments for the Job Access and Reverse Commute program through a two-stage process. Applications must be submitted to the appropriate FTA regional office (see Appendix A) by the close of business December 31, 1998. After evaluation, those whose projects are selected for funding will be required to submit supplementary documentation demonstrating compliance with all of FTA's Section 5307, ''Urbanized Area Formula Grants'' requirements. FTA will announce grant selections in February 1999.

FTA will accept comments on this notice until November 23, 1998. Based on this input, FTA may provide amending and clarifying information. At a later date, FTA intends to solicit comments from all interested parties to determine if program adjustments are merited in future solicitations.

ADDRESSES: Comments on or questions about this Notice can be made at FTA's web site http://www.fta.dot.gov/wtw/japc.html or can be sent or faxed to the following address: *Doug Birnie, Federal Transit Administration, Room 6423, 400 7th Street, S.W., Washington, D.C. 20590 (FAX (202) 366–3765).*

FOR FURTHER INFORMATION: Contact the appropriate FTA Regional Administrator for application specific information and issues (Appendix A). For general program information, contact Doug Birnie, Office of Research Management, (202) 366–1666, email douglas.birnie@fta.dot.gov. A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION

Table of Contents

I. General Program Information

A. Authority

Section 3037 of the Transportation Equity Act for the 21st Century (TEA–21).

B. Background

While two-thirds of all new jobs are in the suburbs, three-quarters of welfare recipients live in rural areas or in central cities. Even in metropolitan areas with extensive transit systems, studies have shown that less than half of the jobs are accessible by transit. In particular, many entry-level workers have difficulty reaching jobs during evening or weekend shifts when transit services are frequently diminished or non-existent. Work trips can also be complex, involving several destinations including child care providers. The problems are equally challenging in rural areas: approximately 40 percent of rural counties lack public transit systems.

Auto ownership among welfare recipients and low income persons is also low. As many as 94 percent of welfare recipients do not own cars and nearly 40 percent of workers with annual incomes below $10,000 do not commute by car. In 1991, the median price of a new car was equivalent to 25 weeks of salary for the average worker and considerably more for the low-income worker.

Transportation is clearly a key barrier to those moving from welfare to work. Providing a variety of new or expanded transportation options for low-income workers, especially those who are receiving or who have recently received welfare benefits, will increase the likelihood that those workers will get and retain jobs.

C. Scope

Improving mobility and shaping America's future by ensuring that the transportation system is accessible, integrated, efficient and offers flexibility of choices is a key strategic goal of the Department of Transportation. Job Access projects provide financial assistance to improve mobility for welfare recipients and other low-income people through implementing new or expanded transportation activities. Reverse Commute projects provide financial assistance to improve mobility to suburban employment opportunities for the general public as well as for welfare recipients and low income people.

D. Eligible Applicants

Local agencies and authorities, non-profit organizations and designated recipients under the FTA section 5307 program (usually a state entity or a regional transit authority) are eligible applicants for Job Access and Reverse Commute grant program funds. Local agencies and authorities include states, local governments, metropolitan planning organizations (MPOs), public transit agencies and tribal organizations.

In urbanized areas with 200,000 population or more, MPOs select the applicant(s). In small urbanized areas under 200,000 population and in non-urbanized, rural, areas states select the applicant(s). Tribal governments must go through the state process that, once selected, can choose to be sub-recipients of the state or apply directly to FTA. FTA urges MPOs to designate a single recipient, who would submit a consolidated application. States are urged to serve as the designated recipient for grants to small urbanized areas and non-urbanized areas. The selected grant recipient can suballocate funds to other project participants.

E. Eligible Projects

1. In general

Job Access or Reverse Commute projects derived from a Regional Job Access and Reverse Commute Transportation Plan are eligible. Please note that grants awarded under the Job Access and Reverse Commute program may *not* be used for planning or coordinating activities. However, planning funds made available under the FTA Section 5303 and 5113(b) programs and the Federal Highway Administration's metropolitan and statewide planning funds (PL) and state planning and research funds (SPR) can be used to fund welfare to work transportation planning activities at a 100 percent Federal share. Other funds, including Department of Health and Human Services Temporary Assistance for Needy Families (TANF) and Department of Labor's Welfare-to-Work (WtW) administrative funds, can also be used for planning.

2. Job Access Project

A Job Access project focused on implementing new or expanded transportation services targeted at filling transportation gaps and designed to transport welfare recipients and low income individuals to and from jobs and other employment-related activities such as child care or training. The Job Access Grant Program will focus on financing the capital and operating costs of new or expanded transportation services providing access to jobs and employment-related services. Employment-related support services are services such as child care, job readiness, job training, and retention services.

Localities have wide flexibility in selecting which service strategies are appropriate for their region, including but not limited to: adding late night and weekend service, providing guaranteed ride home service, initiating shuttle service, extending fixed route mass transit services, providing demand responsive van service, sponsoring ridesharing and carpooling activities, and encouraging bicycling. Localities are encouraged to implement innovative approaches to service management such as the establishment of regional mobility managers or transportation brokerage activities, application of geographic information systems (GIS) tools, implementation of intelligent transportation systems including customer trip information technologies, the integration of automated regional public and human service transit information scheduling and dispatch functions, vehicle position monitoring systems and electronic fare cards.

Job Access and Reverse Commute grants also may be made for promoting the use of: transit by workers with non-traditional work schedules, transit vouchers by appropriate agencies for welfare recipients and eligible low-income individuals; or employer-provided transportation such as shuttles, ridesharing, carpooling or transit pass and benfits under Section 132 of the Internal Revenue Code of 1986. Marketing and advertising are examples of promotional activities that could be undertaken to increase awareness of these transportation options and their benefit to welfare recipients and low-income individuals. Other locality-specific actions, strategies and linkages that further the program goals, but are not captured in the preceding description, also may be eligible.

Activities such as funding transit passes and construction of child care centers and other employment support facilities at transit hubs will not be elibible for Job Access grants. Transit-oriented construction activities are eligible under FTA's Section 5307, 5309 and 5311 Formula Grant programs. Transit passes are eligible expenses under Temporary Assistance for Needy Families (TANF) and Welfare-to-Work (WtW) programs.

Programs for private automobile ownership and repair are not legally eligible under this grant funding. However, programs supporting carpooling and other forms of mass transportation and shared-ride use, such as jitneys or special paratransit service, are eligible. In cases where vehicle acquisition is part of the program, vehicles must remain under the continuing control of the agency receiving the grant.

3. *Reverse Commute Project*

A Reverse Commute project facilitates the provision of new or expanded public mass transportation services from urban areas, suburban and rural areas to suburban work places.

Reverse Commute services include, but are not limited to subsidizing, the costs associated with adding bus, train, car and van pooling, van routes, or service; and the purchase or lease by a nonprofit organization or public agency of a van or bus dedicated to shuttling employees from their residence to a suburban work place and return.

F. Funding Availability

TEA–21 authorizes the Job Access and Reverse Commute program at $150 million annually, subject to

appropriations. The guaranteed funding levels start at $50 million in FY 1999 and increase by $25 million annually to $150 million in FY 2003. No more than $10 million annually can be used for Reverse Commute projects. Urbanized areas with populations of at least 200,000 are allocated 60 percent of each fiscal year's funding. The remaining 40 percent is divided evenly between urbanized areas with populations between 50,000 and 200,000, which receive 20 percent, and non-urbanized, rural, areas with populations below 50,000, which also receive 20 percent.

The FY 1999 Department of Transportation Appropriations Act provides $75 million for the Job Access and Reverse Commute Program, including no more than $10 million for Reverse Commute activities. Therefore, in accordance with the allocation percentages specified in TEA–21, for FY 1999: $45 million is available for urbanized areas with populations of at least 200,000; $15 million is available for urbanized areas with populations between 50,000 and 200,000; and $15 million is available for non-urbanized, rural, areas with population of less than 50,000.

G. Cost Sharing

The Job Access and Reverse Commute grant program is intended to fill gaps in existing services and leverage other state and local transportation-related funding to address the unmet needs of individuals moving from welfare to work and other low income populations. The Job Access and Reverse Commute grant program is not large enough to fund all the critical transportation needs associated with meeting these needs. FTA's program, including the funds used to match the grants, is not intended to replace any existing source of funds. The maximum DOT share of a grant under the Job Access and Reverse Commute program may not exceed 50 percent of the total project cost. The non-DOT share shall be provided in cash. If funds are matched from other Federal programs, the funds may be applied directly to project expenses by the recipients of those funds. Revenues from service agreements are an eligible match, but revenues from individual fares cannot be used as a match.

Transportation-eligible funding from Federal programs other than the Department of Transportation may be used as match. These include but are not limited to: Temporary Assistance for Needy Families (TANF), Community Services Block Grants (CSBG) and Social Services Block Grants (SSBG) administered by the U.S. Department of Health and Human Services; Welfare-to-Work (WtW) formula and competitive grants administered by the U.S. Department of Labor; Community Development Block grants (CDBG) and HOPE VI grants administered by the U.S. Department of Housing and Urban Development. The prohibitions on the use of WtW funds for matching requirements under section 403(a)(5)(C)(ii) of the Social Security Act does no apply to Federal or state funds to provide transportation services. TANF and WtW grants, when used as match, may be expended only for new or expanded transportation services and cannot be used for construction or to subsidize current transit operating expenses. Such funds also must supplement rather than supplant other state expenditures or transportation. (''Child Support Performance and Incentives Act of 1998,'' Pub. L. 105–200, Sec. 403, ''Limitations on Use of TANF Funds for Matching Under Certain Federal Transportation Programs.'')

More extensive guidance on the use of TANF and WtW funds for transportation will be provided shortly. Guidance provided in a May 4, 1998, letter from the Secretaries of Health and Human Services, Labor, and Transportation is currently being updated.

H. Federal Coordination/Outreach

To help guide implementation of the Job Access and Reverse Commute program, DOT has conducted an extensive public outreach process. To ensure that the Job Access and Reverse Commute program complements other Federal welfare to work initiatives, DOT has worked closely with other Federal agencies in writing this program notice and will establish an interagency work group to assist in the application review process.

I. Planning

1. Coordinated Transportation/Human Services Planning Process

Proposed Job Access and Reverse Commute projects must be derived from a Regional Job Access and Reverse Commute Transportation Plan (see below) which results from a coordinated public transit/human services transportation planning process. The planning process may be initiated by any interested stakeholder group in the area. FTA encourages MPOs to serve as the regional forum.

The planning process must include local transit agencies, the agencies administering TANF and WtW formula and competitive grants, welfare recipients and low-income people. The planning process also should include other stakeholders such as:

Regional planning officials; human service, private, non-profit and other appropriate transportation and support service providers; community residents and organizations; faith-based organization; disability groups and representatives; local and state workforce development organizations including One-Stop Career Centers; recipients of TANF and WtW grants; public and assisted housing providers and community development agencies; economic development agencies; employers and employer groups (such as transportation management organizations and Chambers of Commerce); Private Industry Councils; and political officials including mayors, county supervisors, state legislators, governors and other state and local officials.

2. Regional Job Access and Reverse Commute Transportation Plan

The purpose of collaboration is to develop a comprehensive regional approach to Job Access and Reverse Commute programs targeted at moving welfare recipients and low income people to jobs regarding of jurisdictional boundaries. Any project proposed for funding should be identified in the Regional Job Access Transportation Plan resulting from the above process. This plan is not meant to supersede but to build upon existing area welfare-to-work transportation planning activities. The Regional Job Access and Reverse Commute Transportation Plan must:

a. Identify the geographic distributions of welfare recipients and low-income people in the region;

b. Identify the geographic distributions of employment centers and employment-related activities in the region;

c. Identify existing public, private, non-profit and human service transportation services in the region;

d. Identify transportation gaps between the geographic distributions of people, as specified in section a, and employment, as specified in section b, which are not currently served by the transportation services, as specified in section c;

e. Identify activities and projects to address the gaps identified in section d. Each project or activity identification should include:

(1) Proposed goals and objectives of the project or activity.

(2) Estimated cost of the project or activity.

(3) explanation of how the project or activity would maximize use of existing transportation service providers and

how the project or activity would be intergrated into existing transportation network

f. A list, in priority order for funding and implementation, of the activities and projects identified in section e.

Plans will vary in complexity according to area location and size. The Regional Job Access and Reverse Commute Transportation Plan should build on and incorporate existing welfare to work transportation planning activities. During this first year of program implementation, FTA recognizes that some areas may have had a cross-jurisdictional collective process to identify the location of welfare recipients, areas of employment and training opportunities, and necessary new transportation links but may not have a full Regional Job Access and Reverse Commute Transportation Plan in place. Communities should document this work to comply with the plan requirements and continue to develop these plans in future years.

3. The Role of Metropolitan Planning Organizations

MPOs are comprised of elected officials, representing local governments, and transportation service providers within the metropolitan area. They are responsible for adopting transportation plans and improvement programs to address a region's unique transportation needs and working with states to include these priorities in statewide plans.

In regions with populations of more than 200,000, MPOs are responsible for selecting applicants to be considered for Federal Job Access and Reverse Commute grant funds. In regions with populations between 50,000 and 200,000, MPOs will recommend projects to the state, which will select the applicants to be considered for Federal Job Access and Reverse Commute grants.

This means that MPOs are responsible for the following:

a. Determining that Job Access and Reverse Commute projects are consistent with the regional long-range transportation plan.

b. Endorsing and subsequently programming Job Access and Reverse Commute projects into the area Transportation Improvement Program.

In all regions with MPOs, individual Job Access and Reverse Commute projects must be adopted into the MPO's Transportation Program prior to receiving the grant. *Because this entails a formal review and project approved by the MPO Policy Board, FTA strongly urges the partners developing the Job Access and Reverse Commute Transportation Plan to communicate with the MPO from an early stage.* Further, as financial sustainability of a project is one of the evaluation criteria, coordination with the agencies participating in the MPO forum could be a critical factor in ensuring long term support for Job Access and Reverse Commute activities.

4. Statewide Transportation Planning Requirements

In all regions with populations of less than 200,000, the state is responsible for selecting applicants, based on recommendations by the MPO, to be considered for Federal Job Access and Reverse Commute grant funds. In addition, Job Access and Reverse Commute projects selected for funding must be endorsed by the state and incorporated into the statewide transportation improvement program. Because this requires approval, FTA strongly urges the partners to communicate with state officials including the State DOT from an early stage. In selecting projects in rural areas, states should give priority to projects providing service to places that are not currently served or are underserved by public transit systems.

5. Improved Transportation Planning

The statewide and metropolitan transportation planning processes mandated by TEA–21 promote ongoing, cooperative, and active involvement of public transportation providers; the public; and state, metropolitan and local government agencies in the development of state-wide and metropolitan transportation plans and improvement programs. DOT expects that the Job Access and Reverse Commute grant program will facilitate and be a catalyst for broadening the transportation planning process to better integrate employment and social equity considerations.

J. General Grant Requirements

After an application has been selected based on the program-specific requirements outlined in this notice, the applicant will be required to submit appropriate background certifications, assurances, and other documentation necessary to meet the requirements of FTA's Urbanized Area Formula Grant Program (Section 5307 program under Title 49, United States Code). These include planning, environmental, school bus, charter, procurement, labor protections and civil rights requirements, including ADA, Title VI, and DBE. Any information technology purchased with these program: funds that is used for a period of time that extends beyond December 31, 1999, must be year 2000 compliant. Applicants must have the financial, legal and technical capacity to apply for and administer projects. Copies of the Section 5307 program guidance (circular FTA 9030.1B ''Urbanized Area Formula Program; Grant Application Instructions,'' Oct. 10, 1996) can be obtained from any FTA Regional Office or electronically through the FTA website. (See Appendix E for summary list.)

K. Performance Monitoring

FTA expects grant recipients to monitor the performance of their Job Access and Reverse Commute services and to cooperate with the legislatively-mandated FTA and GAO national evaluations. Performance monitoring indicators are necessary for both the applicant's project implementation and for the national program evaluation. FTA will work with grantees to standardize performance monitoring indicators for all Job Access and Reverse Commute Grant recipients. At a minimum, FTA will expect information to be reported on a regular basis in the following categories:

1. New/expanded service.

a. Route miles of travel.

b. Hours of operation.

c. Frequency (or headway) of service.

2. Increased Accessibility to Target Market.

a. Approximate number of low-income/welfare persons within a given distance from service.

b. Approximate measurement of employment opportunities and employment-related support services within a given distance from the service.

3. Use and Productivity of Service.

a. Number of riders.

b. Comparison of baseline estimates of ridership for welfare recipients and low-income individuals to current ridership based on periodic surveys or actual count.

c. Customer Satisfaction.

4. Collaboration.

a. List of organizations involved in the Job Access and Reverse Commute planning process.

b. Number of meetings or other activities held.

c. Listing of transportation services provided through collaboration.

d. New financial arrangements developed.

e. Additional cooperative initiatives.

II. Guidelines for Preparing Grant Application

FTA is conducting a national solicitation for applications under the Job Access and Reverse Commute

Program. Grant awards will be made on a competitive basis. FTA encourages both traditional and non-traditional grantees in urban, suburban, and rural areas to participate in the development of projects.

A. Grant Funding Amounts

Due to the relatively limited funding in FY 1999 and consistent with the legislatively-mandated funding distribution categories, FTA suggests the grant sizes identified below. Applicants may request smaller amounts from FTA.

I. For urbanized areas with populations of over one million, FTA expects to make average grants of $1 million.

2. For urbanized areas with populations greater than 200,000 and less than one million, FTA expects to make average grants of $500,000.

3. For urbanized areas with populations between 50,000 and 200,000, FTA expects to make average grants of $200,000. States should generally not submit applications that collectively exceed $1 million for this category.

4. For rural areas (areas with populations of less than 50,000), individual area grant applications generally should not exceed $150,000. Collective state grant applications for rural areas generally should not exceed $1 million.

B. Project Scope

Proposed projects must be drawn from a Regional Job Access and Reverse Commute Transportation Plan and focus on new or expanded transportation services. For FY 1999, grantees should focus on projects that can be implemented quickly.

FTA recognizes that some grantees may have well-developed plans that extend over several years and that have implementation costs that exceed the suggested FY 1999 grant size. These applicants may request a multi-year funding commitment to implement their plans. In these cases, applicants may elect to use the FY 1999 grant to fully fund high priority items of the regional plan, with subsequent grants used to phase in additional elements of the plan. Alternatively, applicants may elect to use the FY 1999 grant to cover the initial costs of a more comprehensive program, with subsequent grants used to fund carry-on activities. There may be other viable multi-year funding alternatives. In deciding on an approach that best meets local needs, applicants must note that any multi-year commitments are subject to an annual review of demonstrated progress in meeting program objectives and milestones identified in the application, as well as the conditions of match, the annual budget process, and congressional appropriations.

For planning purposes, future year funding in multi-year commitment requests should conform to the FY 1999 grant size guidelines.

III. Application Submission

A. Application Development

To promote collaboration and reduce administrative paperwork, FTA strongly encourages the submission of a consolidated application by a single entity in urbanized areas and the submission of a consolidated application by the state for rural areas. In both cases, funds may be passed on to subrecipients. Tribal projects selected by the state may choose to allow the state to include their program in the state's application or to apply directly to FTA. Furthermore, FTA encourages states and local transit authorities, which have experience in developing and administering FTA grant programs to serve as the single entity submitting applications on behalf of other entities, as these existing FTA grantees may have already met, or have on file information that will satisfy many of the FTA requirements that apply to this program.

B. Application

An original and two copies of the application must be submitted to the appropriate FTA Regional Office. The application should provide information on all project(s) for which you are requesting funding in FY 1999. If a multi-year commitment is sought, the information should cover all years for which funding is sought. The information provided in support of this application may vary with the size of the area applying and the grant being sought. Applicants should develop brief narratives on the information sought. Project narratives should not exceed 10–15 pages.

The application should include the following elements:

1. *Transmittal Letter.*

This addresses basic identifying information including:

a. Grant Applicant.

b. Contact name and phone number.

c. Population size of region.

d. Location of proposed project(s).

e. Amount of grant request.

2. *Project Eligibility.*

Every application must:

a. Describe applicant's organizational capacity to implement the proposed project(s).

b. Document matching funds, including amount and source.

c. Attach Regional Job Access and Reverse Commute Transportation Plan.

d. Document approval by affected transit authorities.

e. For urbanized areas with populations over 200,000, document MPO selection and intention to amend the Transportation Improvement Plan (TIP) if project is selected for funding.

f. For urbanized areas with populations between 50,000 and 200,000, document state selection and MPO intention to amend the TIP if project is selected for funding.

g. For areas with populations below 50,000, document state selection and intention to amend the state-wide transportation improvement plan (STIP) if project is selected for funding.

3. *Project Information.*

Provide a summary of project activities from the Regional Job Access and Reverse Commute Transportation Plan for which your application is requesting funding. The summary should include:

a. Each project's time line, including significant milestones.

b. Designation of project as a Job Access or Reverse Commute service. If applying under both, indicate how you will divide the funds.

c. Project budget (See Appendix C).

4. *Project Narrative.*

Provide the information identified below to support your application. More descriptive information has been provided in Section I of this notice.

a. Document the coordinated human services/transportation planning process. This should include:

1. Description of the collaborative transportation/human services process used in developing the Regional Job Access and Reverse Commute Transportation Plan.

2. List of the participants and their respective roles.

3. Identification of new partnerships and cooperative relationships developed.

4. Description of specific coordination with legislatively-mandated partners: transportation providers and transit agencies, state agencies administering the TANF and WtW funds.

5. Description of consultation with and public involvement of the community to be served, including welfare recipients and low income residents.

6. Sign-offs or letters of endorsement from planning partners.

b. Describe the unmet need for additional transportation services to transport welfare recipients and low income individuals to jobs, training and other employment services. This should include:

1. Definition of the proposed service areas and the population and communities to be served.
2. The number of welfare recipients and low income persons and the percentage of the population that they represent.
3. Description of the existing transportation resources, if any, including human services, nonprofit and public transportation providers.
4. Description of transportation gaps in existing services.
5. For Reverse Commute projects, information on the need for additional transportation services.

c. Describe how the proposed services will meet the unmet need described above. This should include or address the following:
1. Specify project goals and objectives.
2. Identify employment potential in the proposed service area.
3. For Job Access projects, estimate low income and welfare recipient ridership.
4. For Reverse Commute projects, estimate ridership by the general public and by welfare recipients and low income individuals.
5. Specify type of capital investments to be funded.
6. Specify type of operating costs to be funded.
7. Provide operation-specific data (e.g., miles/hours of service, new routes, route extensions, etc.).
8. Specify how use of all existing transportation service providers is being maximized.
9. Describe how these services will address the needs of persons with disabilities and how the requirements of ADA will be met.
10. Present indicators that will be used to monitor project performance and make subsequent adjustments in project implementation.

d. Document financial commitments, including prospects for sustainability.
1. Identify how human service (such as TANF, WtW, other Federal, state or local) financial resources have been leveraged.
2. Identify the financial commitment of existing transportation providers.
3. Identify long term financing that may be proposed or available to support continuation of the proposed project or other aspects of the regional plan.

e. Variable Factors. Please specify how each of the following factors applies to your project(s). If any are not applicable, explain why not.
1. Innovative Approaches—Identify innovative techniques in and approaches to the proposed project.
2. Use of Employer-based Strategies—Describe any commitment by employers that will contribute to the success of the project.
3. Linkages to Other Employment Support Services—Identify available employment support services that complement the transportation activities and are critical to ensuring that welfare recipients get and retain jobs.
4. Other Strategies—Describe other locality-specific actions, strategies and linkages, about which FTA should be aware, that were not captured in the preceding criteria.

The checklist in Appendix D should be used to ensure that you have developed a complete application.

IV. Grant Review Process

Applications are to be submitted to the appropriate FTA Regional Office by the close of business December 31, 1998. FTA will screen all applications to determine whether all required eligibility elements, as described in Section 2 of the Application, are present. A multi-agency task force will evaluate each application according to the criteria described in this announcement. FTA will select projects based on what is most advantageous to the government, considering, in addition to the award criteria, the time frame for implementation, the availability of funds, and geographic distribution.

A. Award Criteria

Once eligibility is established, the merit of each application will be evaluated based on the following factors. The number of points in parentheses indicates the maximum level of points for a given factor.

1. Coordinated human services/ transportation planning process and Regional Job Access and Reverse Commute Transportation plan (25 Points)

Evaluated based on the extent to which the applicant:
(A) Demonstrates a collaborative planning process, including:
(1) coordination with, and the financial commitment of, existing transportation service providers;
(2) coordination with the state or local agencies that administer the state program funded under part A of title IV of the Social Security Act (TANF and WtW grant programs);
(3) coordination with public housing agencies (including Indian tribes and their tribally designated housing entities as defined by the Secretary of HUD) if any, which intend to apply for Welfare to Work Housing Vouchers from the Department of Housing and Urban Development;
(4) consultation with the community to be served; and
(5) consultation with other area stakeholders.
(B) Presents a Regional Job Access and Reverse Commute Transportation Plan addressing the transportation needs of welfare recipients and low-income individuals.

2. Demonstrated Need for Additional Transportation Services (30 Points)

Evaluated based on the extent to which the applicant demonstrates:
(A) in the case of an applicant seeking assistance to finance a Job Access project, the relative need for additional services in the area to be served to transport welfare recipients and eligible low-income individuals to and from specified jobs, training and other employment support services; and
(B) in the case of an applicant seeking assistance to finance a Reverse Commute project, the need for additional services to transport individuals to suburban employment opportunities.

3. Extent to Which Proposed Services Will Meet the Need for Services (35 Points)

Evaluated based on the extent to which:
(A) The proposed service will meet the need.
(B) To which the applicant demonstrates the maximum use of existing transportation service providers and expands transit networks or hours of service, or both.

4. Financial Commitments (10 Points)

Evaluated based on the extent to which the applicant:
(A) Identifies long-term financing strategies to support proposed services.
(B) Identifies financial commitments by human service providers.
(C) Identifies financial commitments by existing transportation providers.

FTA also will consider the extent to which the applicant addresses the following variable factors: (10 Bonus Points Total)

1. Innovative approaches that are responsive to identified service needs;
2. Use of employer-based strategies;
3. Linkages to other employment-related support services; and
4. Other strategies that are effective in meeting program goals.

B. Notification

FTA will notify applicants in February 1999. Those selected must then submit appropriate background certifications, assurances, and other

documentation necessary to meet the applicable FTA Section 5307 Urbanized Area Formula Grant Program requirements and be included in the TIP or STIP as appropriate. Technical assistance regarding these requirements is available in each FTA regional office. Complete documentation must be submitted to the appropriate FTA regional office no later than March 31, 1999.

FTA is committed to obligating FY 1999 Job Access and Reverse Commute funding expeditiously. Therefore, FTA urges applicants to develop documentation in accordance with the Section 5307 program guidance as soon as possible. This allows the information necessary for grant approval to be readily available for submission to FTA when projects are selected for funding. FTA will approve final applications as soon as they are complete.

Issued on: November 3, 1998.

Gordon J. Linton,

Administrator.

APPENDIX A—(FTA) REGIONAL OFFICES

Region I—Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont and Maine, Richard H. Doyle, FTA—Regional Administrator, Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, (617) 494–2055

Region II—New York, New Jersey, Virgin Islands, Letitia Thompson, FTA—Regional Administrator, 26 Federal Plaza, Suite 2940, New York, NY 10278–0194, (212) 264–8162

Region III—Pennsylvania, Maryland, Virginia, West Virginia, Delaware, Washington, D.C., Sheldon Kinbar, FTA—Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, (215) 656–7100

Region IV—Georgia, North Carolina, South Carolina, Florida, Mississippi, Tennessee, Kentucky, Alabama, Puerto Rico, Susan Schruth, FTA—Regional Administrator, 61 Forsyth Street, S.W., Suite 17T50, Atlanta, GA 30303, (404) 562–3500

Region V—Illinois, Indiana, Ohio, Wisconsin, Minnesota, Michigan, Joel Ettinger, FTA—Regional Administrator, 200 West Adams Street, Suite 2410, Chicago, IL 60606–5232, (312) 353–2789

Region VI—Texas, New Mexico, Louisiana, Arkansas, Oklahoma, Lee Waddleton, FTA—Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, (817) 978–0550

Region VII—Iowa, Nebraska, Kansas, Missouri, Mokhtee Ahmad, FTA—Regional Administrator, 6301 Rockhill Road, Suite 303, Kansas City, MO 64131–1117, (816) 523–0204

Region VIII—Colorado, North Dakota, South Dakota, Montana, Wyoming, Utah, Louis Mraz, FTA—Regional Administrator, Columbine Place, 216 16th Street, Suite 650, Denver, CO 80202–5120, (303) 844–3242

Region IX—California, Arizona, Nevada, Hawaii, American Samoa, Guam, Leslie Rogers, FTA—Regional Administrator, 201 Mission Street, Suite 2210, San Francisco, CA 94105–1831, (415) 744–3133

Region X—Washington, Oregon, Idaho, Alaska, Helen Knoll, FTA—Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, (206) 220–7954

Appendix B—Definitions

1. *Welfare Recipient*—An individual, who receives or received aid or assistance under a state program funded under Part A of Title IV of the Social Security Act (whether in effect before or after the effective date of the amendments made by Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193); 110 Stat 2110) at any time during the 3-year period before the date on which the applicant applies for a grant.
2. *Elibible Low-Income Individual*—An individual whose family income is at or below 150 percent of the poverty line (as that term is defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) including any revisions required by that section for a family of the size involved. These are calculated by HHS; the 1998 guidelines were published in the February 24, 1998, (Volume 63, Number 36) *Federal Register,* page 9235–9238.
3. *Existing Transportation Service Provider*—Public transportation providers including public, private and non-profit fixed route and paratransit operators, and governmental agencies and nonprofit organizations that receive assistance from Federal, state, or local sources for nonemergency transportation services.
4. *Human Services Provider*—Agencies and organizations involved in helping welfare recipients and low income populations to make the transition to work and providing supportive employment services. These agencies and organizations include state and local workforce development organizations, agencies administering TANF and WtW formula and competitive funds, public and assisted housing providers and community development agencies, and where appropriate, faith-based and community-based organizations providing employment support services.
5. *Qualified Entity*—(A) With respect to any proposed eligible project in an urbanized area with a population of at least 200,000, the applicant(s) selected by the appropriate metropolitan planning organization that meets the program eligibility requirements, including planning and coordination requirements, from among local governmental authorities and agencies and nonprofit organizations; and (B) With respect to any proposed eligible project in an urbanized area with a population of greater than 50,000 and less than 200,000, or an area other than an urbanized area, the applicant(s) selected by the chief executive officer of the state in which the area is located that meets the program eligibility requirements, including the planning and coordination requirements, from among local governmental authorities and nonprofit organizations.
6. *Transit Capital and Operating Assistance Projects*—This term means projects to finance acquisition, construction, improvement, and operating costs of facilities, equipment and associated capital maintenance items used in mass transportation service, including crime prevention and security of and for such equipment and facilities. Direct administrative expenses associated with the provision of job access and reverse commute services are also eligible operating expenses.

Appendix C—Sample Project Budget

FY 99 FUNDING

Applicant: ———— Area Size: ————

	Federal amount	Total amount
A. Job Access Project		
Capital Costs		
Activity	_____	_____
Quantity	_____	_____
Activity	_____	_____

FY 99 FUNDING—Continued

Applicant: ———— Area Size: ————

	Federal amount	Total amount
Quantity		
Example		
Activity		
Vans		
Quantity 4		
Operating Costs		
Activity		
Activity		
Example		
Activity		
Late Night		
Service (3 Routes)		
Total		
B. Reverse Commute Project		
Capital Costs		
Activity		
Quantity		
Activity		
Quantity		
Example		
Activity		
Vans		
Quantity 4		
Operating Costs		
Activity		
Activity		
Example		
Activity		
Two new routes		
Total		
Grand Total (A or B or A & B) for those applicants seeking a multi-year commitment, provide this information for subsequent years of reference budget material from your Job Access Transportation Plan.		

Appendix D—Application Check List (To Meet December 31 Deadline)

☐ TRANSMITTAL LETTER
☐ PROJECT ELIGIBILITY
- Organizational Capacity
- 50 Percent Non-DOT Match
- Regional Job Access and Reverse Commute Transportation Plan
- Approval of Affected Transit Authorities
- MPO/State Endorsement and Programming as Appropriate

☐ PROJECT INFORMATION
- Activity Summaries/Timelines/Milestones
- Designation As Job Access Or Reverse Commute Project
- Project Budget

☐ PROJECT NARRATIVE
- Documentation of Coordinated Human Services/Transportation Planning Process
  - ✔ Coordination with Agencies Administering TANF & WtW
  - ✔ Coordination with Existing Transportation Operators
  - ✔ Consultation with Affected Communities
  - ✔ Consultation with Employers
- Documentation of Unmet Needs
- Description of How Proposed Services Will Meet Needs
- Documentation of Financial Commitments
- Response to Variable Factors (Bonus Points)
  - ✔ Innovative Approaches
  - ✔ Employer-Based Strategies
  - ✔ Linkages to Other Employment Support Services
  - ✔ Other Strategies

Appendix E—Summary of FTA's Section 5307 Requirements

This is the full range of 5307 requirements. Some of these items are covered in the application, in which case you will not need to submit information twice.

APPROVAL PREREQUISITES:
(On file with FTA, or to be submitted with application and updates as appropriate)
Opinion of Counsel
Authorizing Resolution
Current annual Certification and Assurances
Civil rights submissions up-to-date

Title VI
Annual DBE Goal
DBE Program
EEO Program
ADA
National Transit Database reports-up-to-date
Any outstanding oversight findings resolved or resolution plan and schedule set
Additional Information:
Project Budget
Project Description
Project Justification/Supporting Information as necessary
Project Milestone Schedule
Labor Union Description(s) (including information about earlier DOL certifications that may apply to this project)
Environmental Review
Date of FTA's signing of FONSI (Finding of No Significant Impact), or
Date of FTA's signing of ROD (Record of Decision) closing out the EIS process, or
Grant applicant's Categorical Exclusion recommendation if neither (a) nor (b) above applies
Air Quality
Date of project level conformity determination by FTA, or
Applicant's recommendation concerning list of exemptions in the conformity regulation (40 CFR Part 51)
STIP—Date of Approved by FTA
Request for copy of Master Agreement
(If applicant does not have latest one on file)

[FR Doc. 98–29777 Filed 11–5–98; 8:45 am]
BILLING CODE 4910–57–M

Friday,
November 6, 1998

Part VI

Department of Health and Human Services

Centers for Disease Control and Prevention

Implementation of the Fertility Clinic Success Rate and Certification Act of 1992; Proposed Model Program for the Certification of Embryo Laboratories; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Implementation of the Fertility Clinic Success Rate and Certification Act of 1992; Proposed Model Program for the Certification of Embryo Laboratories

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice and request for comments.

SUMMARY: The Fertility Clinic Success Rate and Certification Act of 1992 (Pub. L. 102–493, 42 U.S.C. 263a–1 et seq.) requires that the Secretary, HHS, through CDC, develop a model program for the certification of embryo laboratories, to be carried out voluntarily by interested States. The model certification program is to be developed in consultation with appropriate consumer groups and professional organizations with knowledge and expertise in assisted reproductive technology.

This notice sets forth a description of the proposed model certification program, including the proposed definitions, administrative requirements, and embryo laboratory standards. Accordingly, CDC solicits comments on the proposed model certification program and reserves the right to revise the program based upon the comments it receives.

DATES: To assure consideration, written comments on the proposed model certification program for embryo laboratories as described in this notice must be received at the address indicated below on or before January 5, 1999.

ADDRESSES: Address all written comments to: Model Certification Program—**Federal Register** Notice, Centers for Disease Control and Prevention, Mail Stop K–66, 4770 Buford Highway N.E., Atlanta, Georgia 30341–3724.

Due to staffing and resourcing limitations, we cannot accept facsimile (FAX) copies of comments nor can we accept comments by telephone.

FOR FURTHER INFORMATION CONTACT: Nancy Anderson or Carol Cook, Division of Laboratory Systems, telephone (770) 488–8047 or (770) 488–8029.

SUPPLEMENTARY INFORMATION:

Introduction

The Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA), Public Law 102–493 (42 U.S.C. 263a–1 et seq.), was intended to provide the public with comparable information concerning the effectiveness of infertility services and to assure the quality of such services by providing for the certification of embryo laboratories.

Section 2 of the statute requires that the Secretary, HHS, through CDC, define pregnancy success rates, and seek public comment on the proposed definitions. In addition, Section 2 requires each assisted reproductive technology (ART) program to annually report its pregnancy success rates to CDC, along with the identity of each embryo laboratory used by the program, and whether the laboratory is certified under Section 3 or has applied for such certification. Section 2 was addressed in a **Federal Register** notice published on August 26, 1997 (62 FR 45259).

Section 3(a) of the FCSRCA requires that the CDC ''develop a model program for the certification of embryo laboratories . . . to be carried out by the States.'' In developing the model certification program, CDC is to consult with ''appropriate consumer and professional organizations with expertise in using, providing, and evaluating professional services and embryo laboratories associated with assisted reproductive technology programs.''

Section 3(b) lists State official who are to received a description of the model certification program, and requires that the Secretary encourage States to adopt such a program.

Section 3(c) includes the requirements for administration of the certification program by the States, with provisions for the inspection and certification of embryo laboratories by States or approved accreditation organizations, and the requirement for application to the State by an embryo laboratory that seeks certification.

Section 3(d) specifies the embryo laboratory standards that are to be in the model certification program. These include a standard to assure consistent performance of laboratory procedures; a standard for a quality assurance and quality control program; standards for the maintenance of all laboratory records (including laboratory tests and procedures performed, as well as personnel and equipment records); and a standard for personnel qualifications.

Section 3(e) includes provisions for a State to adopt the model certification program if it applies to the Secretary, and is approved, and Section 3(f) allows for the use of accreditation organizations, approved under the requirements described in Section 4, to inspect and certify embryo laboratories in States that have adopted the program.

Section 3(g) requires that States which qualify to adopt the model certification program conduct embryo laboratory inspections to determine if the laboratories meet the requirements of the program. Section 3(g) also requires the Secretary to seek public comment on the conditions under which announced inspections may be conducted without diminishing the likelihood of discovering deficiencies in the operations of an embryo laboratory. In addition, inspection results (including deficiencies and any subsequent corrections to those deficiencies) are to be reported and made available to the public.

Section 3(h) provides for the Secretary to conduct validation inspections of embryo laboratories certified by a State or an approved accreditation organization to determines if the laboratories are being operated in accordance with the standards in the model certification program. If a validation survey demonstrates that an embryo laboratory is not in compliance with such standards, the statute specifies requirements for notification of the State, or as applicable, the accreditation organization. A subsequent investigation and inspection of additional certified embryo laboratories are to be conducted to determine if the State or accreditation organization is reliably identifying laboratory deficiencies. The Secretary may revoke the approval of the State certification program or accreditation organization if requirements applicable to the program are not being met.

Section 3(i) limits the Secretary is developing the model certification program, and the States in adopting such program, from establishing any regulation, standard, or requirement that has the effect of exercising supervision or control over the practice of medicine in ART programs.

Section 3(j) states that the Secretary may define the term of the certification issued by a State or an accreditation organization in a State, through the public comment process, and provides for application for recertification to be submitted when there is a change in ownership or administration of a certified embryo laboratory.

Section 4 calls for the Secretary, through CDC, to promulgate criteria and procedures for the approval and use of accreditation organizations to inspect and certify embryo laboratories in States which have adopted the model certification program, as well as in States which have not adopted the program. The section also includes

provisions for annual evaluation of approved accreditation organizations by the Secretary, through the inspection of a representative sample of accredited embryo laboratories and other such appropriate means.

Section 5 specifies the conditions under which a certification issued by a State or an accreditation organization shall be revoked or suspended, and the effect that such revocation or suspension would impose on the certification and application for recertification of the laboratory.

Section 6 mandates that the Secretary, through CDC, annually publish pregnancy success rates as reported by ART programs (Section 2); the names of ART programs that fail to report pregnancy success rates; the identity and certification status of each embryo laboratory located in a State which has adopted the model certification program; the identity of each embryo laboratory in a State which has not adopted the certification program and which has been certified by an approved accreditation organization; and in the case of an embryo laboratory which is not certified, whether the laboratory has applied for certification. The annual publication is to be distributed to States and the public. This section was also addressed in the previously mentioned **Federal Egister** notice published on August 26, 1997 (62 FR 45259). The first report, 1995 Assisted Reproductive Technology Success Rates: National Summary and Fertility Clinic Reports, was published in December 1997. Copies of the report may be obtained by contacting RESOLVE, a national consumer organization helping infertile couples and individuals, at 1–888–299–1585 or via the Internet at www.resolve.org.

Section 7 authorizes the Secretary to charge sufficient fees to cover the cost of administering the FCSRCA and authorizes States adopting the certification program to charge sufficient fees to cover the cost of administering their program.

Section 8 includes a definition of assisted reproductive technology and provides for seeking public comment on any proposed expansion of the definition.

Actions Taken To Develop the Proposed Model Certification Program

In accordance with the FCSRCA, CDC consulted with individuals, professional organizations and consumer groups with expertise and interest in ART throughout the development of the proposed model certification program for embryo laboratories. Consultation was provided by organizations representing reproductive medicine, including the American Society for Reproductive Medicine (ASRM) and the Society for Assisted Reproductive Technology, laboratory organizations such as the College of American Pathologists (CAP) and the American Association of Bioanalysts, and a consumer group that serves to educate the public on infertility diagnosis and treatment (RESOLVE). CDC also worked closely with several State programs throughout the process to ensure that the proposed model certification program, when finalized, could easily be adopted and implemented by interested States, and sought input from Federal agencies with regulatory responsibilities related to laboratory practice, tissue banking and ART.

A useful example in developing the proposed model certification program was the voluntary accreditation program for reproductive laboratories that is currently administered by the CAP. This program was developed jointly between the CAP and the ASRM, and has been in existence since 1993. More than one third of the embryo laboratories associated with ART programs in the United States currently participate in this voluntary program. As CDC began drafting the proposed model certification program, an initial step was to meet with representatives from the CAP to gather information on the CAP/ASRM Reproductive Laboratory Accreditation Program, including the laboratory standards and inspection checklists used by CAP inspectors and reproductive laboratories. CDC also used a variety of guidelines and standards from other professional organizations, State, Federal, and international programs as resources (see References), and made a number of site visits to embryo laboratories to observe the daily operation of these facilities.

Between November 1996 and August 1997, CDC held several work sessions with technical consultants to obtain input on specific issues related to the embryo laboratory and the proposed model certification program, including personnel qualifications and responsibilities, quality assurance and quality control (quality management), recordkeeping, specific definitions as they apply to the model certification program, and State administration of the program. The individuals who participated in these work sessions were asked to provide consultation because of their expertise and interest in ART laboratory procedures, or experience with clinical laboratory testing. The input provided by each consultant was used by CDC to assist in its internal deliberations to develop a practical and effective model certification program for embryo laboratories. No group consensus was sought at any of the sessions.

On-going Review of Embryo Laboratories

In passing the FCSRCA, Congress anticipated that the cost of Federal and State monitoring and oversight of embryo laboratories would be covered by the fees they pay. Section 7 of the statute provides for the collection of sufficient fees from participating embryo laboratories to cover these costs. However, participation by embryo laboratories is voluntary; laboratories not willing to pay these fees would not be limited in their ability to operate.

CDC plans to implement oversight and monitoring under the FCSRCA to the extent the roughly 350 embryo laboratories are willing to voluntarily pay sufficient fees to cover oversight costs. At this time, embryo laboratories have not indicated they would opt into such an oversight program. CDC will continue to review embryo laboratories' interest in, and willingness to pay for, a formalized Federal oversight program, and adjust CDC's plans accordingly.

CDC has, however, developed these proposed model certification standards, incorporating the definitions, administrative requirements and laboratory standards that are called for in the FCSRCA, and is publishing them to provide an opportunity for public comment. The model certification program will be revised as necessary, based on these comments, published as a final notice in the **Federal Register,** and the final model will be distributed to State officials and health authorities as outlined in the statute.

At this time, CDC will defer implementation of the approval of state certification programs or accreditation organizations. In addition, Federal validation inspections of embryo laboratories certified by States adopting the model or accredited by an accreditation program for embryo laboratories will also be deferred until a sufficient number of laboratories are willing to opt into a self-supporting system. In this proposed model, implementation of these activities would be the responsibility of States that choose to adopt the model certification program.

To summarize, CDC proposes a model certification process for embryo laboratories performing assisted reproductive technology (ART). In developing this proposal, we have carefully reviewed an existing program, the CAP/ASRM Reproductive Laboratory Accreditation Program

(RLAP) which was developed by the professional community and provides oversight of embryo laboratories affiliated with ART programs and clinics. We have also taken note that there are existing voluntary programs in other areas of laboratory practice, such as the American Society of Clinical Pathologists and the American Board of Bioanalysts' laboratory personnel certification programs, that have had a beneficial impact on laboratory quality, without Federal oversight.

As mentioned previously in this preamble, the CAP/ASRM's RLAP provided the basis for many of the laboratory standards specified in the proposed model. We believe that this existing ART laboratory accreditation program likely will meet the standards we have proposed in the model and will provide an excellent resource for States which wish to develop their own certification program. In addition, other professional organizations have expressed an interest in establishing and/or adopting standards for the embryo laboratory; the proposed certification process should benefit those other groups.

While the model certification program for embryo laboratories proposed in this model does not provide for a Federal oversight role until a sufficient number of laboratories would opt into a self-supporting system, we welcome public comment on the need, desirability and specific benefits of Federal oversight.

Request for Comments on the Proposed Model Certification Program

Written comments on any aspect of the proposed model certification program included in this notice may be submitted to CDC during the public comment period at the address specified for receipt of comments. In addition, the FCSRCA requires the Secretary to facilitate public comment on specific aspects of the model certification program and the definitions as they relate to the model. To ensure appropriate consideration by commenters, the following issues are highlighted:

- Based on the comments received during the previously mentioned work sessions with technical consultants, the proposed model's definitions for ''assisted reproductive technology'' and ''embryo laboratory'', have been elaborated from the definitions specified in the FCSRCA. The issue is whether the revised definitions are appropriate and accurate for use in the model certification program.
- The proposed model permits announced initial and routine inspections and unannounced inspections for complaint investigations. The issues are under what circumstances should announced inspections be permitted so as not to diminish the likelihood of discovering deficiencies in the operation of an embryo laboratory, and whether there are circumstances that should require unannounced inspections.
- The proposed model specifies a 2-year term for embryo laboratory certification. The issue is whether this is an appropriate period of time for the term of certification of a laboratory (i.e., renew biennially).

In addition, we are interested in receiving comments on the following issue which is not specifically addressed in the proposed model certification program but may be considered for inclusion in the finalized model:

- Proficiency testing (PT) currently available for the embryo laboratory is limited to determining whether culture media samples provided by the PT program are suitable for in vitro mouse embryo culture. While the performance of PT is not required in the proposed model, the model's standards do require a laboratory to perform quality control procedures to monitor the reliability of the ART procedures performed (including culture media checks). Equipment and instrument maintenance and function checks are also required to ensure their adequate performance. In addition, the laboratory must track and evaluate procedural outcomes such as fertilization rates, cleavage rates and embryo quality as a means of monitoring the quality of the procedures and services provided by the laboratory. The issue is whether these standards provide a sufficient means for monitoring laboratory performance or if a standard requiring PT should be included in the model.

Organization of Proposed Model Certification Program

This notice describes the proposed model certification program for embryo laboratories and includes the proposed definitions (Part I), proposed administrative requirements (Part II), and proposed embryo laboratory standards (Part III). References are also provided as an addendum to this notice for background and educational purposes.

Dated: October 28, 1998.

Jeffrey P. Koplan,

Director, Centers for Disease Control and Prevention (CDC).

PROPOSED MODEL CERTIFICATION PROGRAM FOR EMBRYO LABORATORIES

Contents

Part I. Definitions

Accredited institution. A school or program which——

(a) Admits as a regular student only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(b) Is legally authorized within the State to provide a program of education beyond secondary education;

(c) Provides an educational program for which it awards a bachelor's degree or provides not less than a 2-year program which is acceptable toward such a degree, or provides an educational program for which it awards a master's or doctoral degree; and

(d) Is accredited by a nationally recognized accrediting agency or association.

This definition includes any foreign institution of higher education that HHS or its designee determines meets substantially equivalent requirements.

Approved accreditation organization. An accreditation organization that has formally applied for and received the State's approval based on the organization's compliance with this model certification program and other requirements as specified by the State.

ART. Assisted reproductive technology.

Assisted hatching. A micromanipulation technique which involves making a small opening in the zona wall of the embryo to enhance implantation.

Assisted reproductive technology. All clinical treatments and laboratory procedures which include the handling of human oocytes and sperm, or embryos, with the intent of establishing a pregnancy. This includes, but is not limited to, in vitro fertilization, gamete intrafallopian transfer, zygote intrafallopian transfer, embryo cryopreservation, oocyte or embryo donation, and gestational surrogacy.

Assisted reproductive technology cycle. Any cycle in which (1) ART has been used, (2) in which the woman has undergone ovarian stimulation or monitoring with the intent of undergoing ART, (3) a woman has donated oocytes, or (4) in the case of cryopreserved embryos, in which embryos have been thawed with the intent of transfer. ART cycles can be stimulated (use of ovulation induction) or unstimulated (natural cycle).

Assisted reproductive technology laboratory procedures. All laboratory procedures for handling and processing of human oocytes and sperm, or embryos, with the intent of establishing a pregnancy. These procedures include, but are not limited to, the examination of follicular aspirates, oocyte classification, sperm preparation, oocyte insemination, assessment of fertilization, assessment of embryo

development, preparation of embryos for embryo transfer, and cryopreservation of specimens.

Assisted reproductive technology program or clinic. A legal entity practicing under State law, recognizable to the consumer, that provides ART to couples who have experienced infertility or are undergoing ART for other reasons. This can be an individual physician or a group of physicians who practice together, and share resources and liability.

Authorized person. An individual authorized under State law to order ART procedures.

CDC. The Centers for Disease Control and Prevention.

CLIA. The Clinical Laboratory Improvement Amendments of 1988.

Certification. The certification of an embryo laboratory by a State certification program or through accreditation by an approved accreditation organization.

Certification program. The model certification program for embryo laboratories described in this notice or a State certification program for embryo laboratories which meets or exceeds the requirements of the model certification program.

Cryopreservation. A technique to preserve biologic material through freezing.

Doctoral scientist. An individual holding an earned doctoral degree in a chemical, physical, biological or medical laboratory science from an accredited institution. As defined here, doctoral scientist also includes individuals holding an earned doctoral degree in veterinary medicine.

Embryo. The normal (2 pronuclei) fertilized egg that has undergone one or more divisions.

Embryo laboratory. A facility in which human oocytes and sperm, or embryos, are subject to ART laboratory procedures.

Embryo transfer. Introduction of an embryo(s) into a woman's uterus after in vitro fertilization.

Fertilization. The penetration of the egg by the sperm and fusion of genetic materials to result in the development of a fertilized egg (or zygote).

Gamete intrafallopian transfer. An ART procedure that involves removing eggs from the woman's ovary, combining them with sperm, and immediately injecting the eggs and sperm into the fallopian tube. Fertilization takes place inside the fallopian tube.

HHS. The U.S. Department of Health and Human Services, or its designee.

Intracytoplasmic sperm injection. The placement of a single sperm into the ooplasm of an oocyte by micro-operative techniques.

In vitro fertilization. A method of assisted reproduction that involves removing eggs from a woman's ovaries, combining them with sperm in the laboratory and, if fertilized, replacing the resulting embryo(s) into the woman's uterus.

Laboratory. Unless otherwise specified in this notice, means embryo laboratory.

Micromanipulation. Microtechniques such as intracytoplasmic sperm injection and assisted hatching commonly used to overcome fertilization disorders.

Physician. An individual with a doctor of medicine or doctor of osteopathy degree who is licensed by the State to practice medicine or osteopathy within the State in which the embryo laboratory is located.

Procedural outcome. The outcome of the assisted reproductive technology laboratory procedure performed e.g., fertilization assessment—the presence of two pronuclei in the ooplasm.

Oocyte. The female reproductive cell, also called an egg.

Specimen. Human biologic material (includes human reproductive tissue such as oocytes, sperm, zygotes and embryos).

Sperm. The male reproduction cell that has completed the process of meiosis and morphological differentiation.

State. Includes, for purposes of this model certification program, each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and other territories of the United States, and a political subdivision of a State where the State, acting pursuant to State law, has expressly delegated powers to the political subdivision sufficient to authorize the political subdivision to act for the State in enforcing requirements equal to or more stringent than the model certification program.

Zygote. A normal (2 pronuclei) fertilized egg before cell division begins.

Zygote intrafallopian transfer. Eggs are collected and fertilized, and the resulting zygote is then transferred to the fallopian tube.

Part II. Administrative Requirements

A. Overview

The certification program for embryo laboratories is a model program developed by the Centers for Disease Control and Prevention (CDC) in accordance with Pub. L. 102–493 (42 U.S.C. 263a–1 *et seq.*) and is to be administered by interested States.

B. Requirements for State Administration of the Model

Certification Program for Embryo Laboratories. The State may adopt and administer the model certification program for embryo laboratories described in this notice of administer a State certification program for embryo laboratories that meets or exceeds the requirements of the model certification program, and must, at a minimum, meet the following provisions—

1. Certification Under State Programs. A State may qualify to adopt and administer the model certification program if the State submits an attestation to CDC (contact to be provided in final notice) providing—

a. Assurances that the certification program for embryo laboratories administered by the State meets or exceeds the requirements of the model certification program specified in this notice.

b. An agreement that in administering the certification program, a State will not establish any regulation, standard, or requirement which has the effect of exercising supervision or control over the practice of medicine in assisted reproductive technology programs or clinics.

c. An agreement that the term of State certification/recertification issued to an embryo laboratory is for a period of not more than two years.

d. An agreement to investigate, when appropriate and to the extent necessary, complaints received about an embryo laboratory certified under the State's program.

e. An agreement to annually report to CDC, (contact to be provided in final notice) the identity and certification status of each embryo laboratory in the State as well as any such laboratory which has applied for certification, and the assisted reproductive technology programs, or clinics with which each embryo laboratory is associated, for annual publication by CDC.

f. Information about any proposed use and approval and revocation of approval of accreditation organizations in accordance with paragraph 2. and 5. of this section.

g. An agreement to make such reports as the Secretary of the Department of Health and Human Services (through CDC) may require.

2. Use and Approval of Accreditation Organizations. Accreditation organizations approved by the State may be used to inspect and accredit embryo laboratories for the purpose of State certification and such accreditation shall constitute certification. The criteria and procedures used by the

State to approve accreditation organizations must include, at a minimum, the following:

a. The accreditation organization must provide assurances satisfactory to the State that its standards and requirements for accreditation of embryo laboratories meet or exceed the requirements of the certification program;

b. The accreditation organization must, at a minimum, conduct inspections of embryo laboratories in accordance with the requirements under paragraph 4. of this section which includes making available to the public, upon request, the specific findings (with any explanatory information required to interpret the findings), including deficiencies identified in an inspection, and any subsequent corrections to those deficiencies, no later than 60 days after the date of the inspection;

c. The accreditation organization must agree to revoke or suspend a laboratory's accreditation for one year, if the accreditation organization finds, on the basis of inspections, that the owner or operator of the laboratory, or any employee of the laboratory—

A. Has been guilty of misrepresentation in obtaining the accreditation.

B. Has failed to comply with any standards of the accreditation program.

C. Has refused a request of the accreditation organization or State for permission to inspect the laboratory, its operations, and records; and

d. The accreditation organization must agree to submit such reports and maintain such records as the State, or HHS, may require, to include, but not be limited to, the following:

i. Notification to the State of each newly accredited embryo laboratory within the State within 30 days of the laboratory obtaining accreditation;

ii. Notification to the State of any embryo laboratory within the State that has its accreditation denied, suspended, withdrawn or revoked, or that has had any other adverse action taken against it by the accreditation organization within 30 days of the action taken;

iii. Notification to the State within 10 days of a deficiency identified in any accredited embryo laboratory within the State where the deficiency poses an immediate jeopardy to the laboratory's patients or a hazard to the general public;

iv. Notification to the State if the accreditation organization finds, on the basis of inspections, that the owner or operator of the laboratory, or any employee of the laboratory—

A. Has been guilty of misrepresentation in obtaining the accreditation.

B. Has failed to comply with any standards of the accreditation program.

C. Has refused a request of the accreditation organization for permission to inspect the laboratory, its operations, and records;

v. Provide inspection schedules as requested by the State for the purposes of conducting onsite validation inspections of laboratories; and

vi. Provide the State written notification at least 30 days in advance of the effective date of any proposed changes in its requirements.

3. Embryo Laboratory Application Requirements. The State must provide for the submission of an application to the State by an embryo laboratory requesting certification, in such form as may be specified by the State. Such an application must include the following:

a. Assurance satisfactory to the State that the embryo laboratory will be operated in accordance with the standards of the certification program;

b. An agreement by the embryo laboratory to—

i. Annually report to the State the assisted reproductive technology programs or clinics with which the laboratory is associated.

ii. Submit changes in the ownership or the administration of the laboratory to the State within 30 days of the change.

iii. Permit the State to conduct onsite inspections including, as applicable, initial, routine, validation and complaint inspections, upon presentation of identification to the owner, operator, or agent in charge of the laboratory, during the laboratory's regular hours of operation to determine compliance with the certification program.

iv. Permit the State to have access to all facilities, equipment, materials, records, and information which the State requires to determine if the laboratory is being operated in accordance with the standards of the certification program.

v. Permit the State to copy any material, record, or information inspected, or submit such, upon request by the State.

vi. Permit the State to make available, upon request, to the public, the laboratory's specific inspection findings (with any explanatory information required to interpret the findings), including deficiencies identified in an inspection, and any subsequent corrections to those deficiencies;

c. If the State allows certification of an embryo laboratory on the basis of the laboratory's accreditation by an approved accreditation organization (i.e., issues a certificate of accreditation), the laboratory must, in addition to the requirements of subparagraphs 3.a. and 3.b. of this section—

i. Submit proof of current accreditation;

ii. Permit the accreditation organization to have access to all facilities, equipment, materials, records, and information which the accreditation organization requires to determine if the laboratory is being operated in accordance with the standards of the accreditation organization program;

iii. permit the accreditation organization to copy any material, record, or information inspected, or submit such, upon request by the accreditation organization;

iv. Permit the accreditation organization to make available, upon request, to the public, the laboratory's specific inspection findings (with any explanatory information required to interpret the findings), including deficiencies identified in an inspection, and any subsequent corrections to those deficiencies; and

v. Agree to authorize the accreditation organization to submit to the State or HHS such laboratory-specific information or reports as the State or HHS may require; and

d. Such other information, agreements and assurances as the State finds necessary.

4. Initial, Routine and Complaint Inspections. Inspections must be conducted to determine if embryo laboratories applying for or renewing their certification meet the requirements of the certification program. In addition, inspections may be performed as part of the State's investigation of complaints received about a certified embryo laboratory. The inspections may be carried out by the State or, as applicable, by an accreditation organization approved by the State in accordance with paragraph 2. of this section.

a. Initial inspections for embryo laboratory certification must be performed during the laboratory's regular hours of operation and may be announced. Initial inspections are performed when the laboratory applies for certification and may be performed for recertification after the laboratory has had a change in ownership or administration.

b. Routine inspections for renewal of the laboratory's certification must be performed biennially, during the laboratory's regular hours of operation and may be announced.

c. Inspections to investigate complaints received by the State about a laboratory may be performed unannounced, during the laboratory's regular hours of operation.

d. Inspection of a laboratory may be made only upon the presentation of identification to the owner, operator, or agent in charge of the laboratory being inspected.

e. In conducting an inspection, the State or approved accreditation organization must have access to all facilities, equipment, materials, records, and information which the State or approved accreditation organization requires to determine if the laboratory is being operated in accordance with the standards of the certification program.

f. The State or approved accreditation organization may copy any material, record, or information inspected or require it to be submitted to the State or, as applicable, to the approved accreditation organization.

g. The specific findings (with any explanatory information required to interpret the findings), including deficiencies identified in an inspection, and any subsequent corrections to those deficiencies must be made available to the public upon request beginning no later than 60 days after the date of the inspection.

5. Validation Inspections. The State must annually evaluate the performance of each approved accreditation organization by performing validation inspections of a sufficient number of embryo laboratories within the State accredited by the organization, to allow a reasonable estimate of the performance of such organization.

a. The State may enter and inspect, during regular hours of operation, embryo laboratories which have been accredited by an approved accreditation organization for the purpose of determining whether the laboratory is being operated in accordance with the standards of the certification program.

b. A validation inspection of a laboratory may be announced and be made only upon the presentation of identification to the owner, operator, or agent in charge of the laboratory being inspected.

c. In conducting a validation inspection, the State must have access to all facilities, equipment, materials, records, and information which the State requires to determine if the laboratory is being operated in accordance with the standards of the certification program.

d. The State may copy any material, record, or information inspected or require it to be submitted to the State.

e. If the State determines as a result of a validation inspection that the embryo laboratory is not in compliance with the standards of the certification program, the State must—

i. Notify the accreditation organization which accredited the laboratory.

ii. Make available to the public the inspection findings (with any explanatory information required to interpret the findings), including deficiencies identified in the inspection, and any subsequent corrections to those deficiencies.

iii. Conduct additional inspections of other embryo laboratories accredited by the accreditation organization is reliably identifying the deficiencies of the laboratories.

f. If the State determines that the accreditation organization has not met the requirements of paragraph 2. of this section, the State may (under such notice and hearing standards to be developed by the State) revoke the approval of the accreditation program.

6. Revocation of an Accreditation Organization's State Approval. If the State revokes approval of an accreditation organization under subparagraph 5.f., of this section—

a. The State must notify each laboratory, accredited by the organization under the State certification

b. The certification of any embryo laboratory accredited by the organization will continue in effect for 60 days after the laboratory is notified by the State of the withdrawal of approval, except that the State may extend the period during which the certification may remain in effect if the State determines that the laboratory submitted an application to another approved accreditation organization for accreditation or to the State, as applicable, in a timely manner after receipt of such notice.

7. Embryo Laboratory Certification Revocation and Suspension.

a. A certification issued by a State for an embryo laboratory must be revoked or suspended if the State or, as applicable, approved accreditation organization finds, on the basis of inspections and after reasonable notice and opportunity for hearing (under such notice and hearing standards to be developed by the State) to the owner or operator of the laboratory, that the owner or operator or any employee of the laboratory—

i. Has been guilty of misrepresentation in obtaining the certification.

ii. Has failed to comply with any standards of the certification program.

iii. Has refused a request of the State or approved accreditation organization for permission to inspect the laboratory, its operations, and records.

b. If the certification of an embryo laboratory is revoked or suspended, the certification of the laboratory shall continue in effect for 60 days after the laboratory receives notice of the revocation or suspension, unless there is a finding that the laboratory's continued operation may constitute a public health threat, in which case the certification shall be immediately revoked or suspended.

c. If the certification of an embryo laboratory is revoked or suspended, the laboratory may apply for recertification after one year after the date of the revocation or suspension.

8. Fees. The State may require the payment of fees for the purpose of, and in an amount sufficient to cover the costs of, administering the certification program.

Part III. Embryo Laboratory Standards

A. Personnel Qualifications and Responsibilities

The embryo laboratory must have a sufficient number of individuals, who meet the qualification requirements, to perform the functions necessary to provide timely services appropriate for the size and volume of the assisted reproductive technology program(s) or clinic(s) served by the laboratory. As a guideline, for every 90–150 assisted reproductive technology cycles performed annually, the laboratory should employ one individual who is capable of performing all assisted reproductive technology laboratory procedures provided by the embryo laboratory. Regardless of workload, at a minimum, two qualified individuals should be available to provide the appropriate laboratory services.

1. Laboratory Director Qualifications. The laboratory director must be qualified to manage and direct the laboratory personnel and the performance of assisted reproductive technology laboratory procedures. The laboratory director must—

a. Possess a current license as an embryo laboratory director issued by the State in which the laboratory is located, if such licensing is required.

b. Be a physician or a doctoral scientist with a broad knowledge of the biochemistry, biology, and physiology of reproduction, and laboratory operations including experimental design, statistics, and problem solving and meet the following.

i. Have two years documented pertinent experience in a laboratory

performing assisted reproductive technology procedures. This experience should induce familiarity with laboratory quality control, sterile technique and cell culture; and

ii. Have documented training of at least 1,000 hours in an embryo laboratory which includes performing, at a minimum, each laboratory component of the human assisted reproductive technology cycle 60 times.

Note: Documented experience and training may be acquired concurrently.

c. If not qualified under paragraph 1.b. of this section, be the director of an embryo laboratory on or before [date of publication of final notice] and meet the following:

i. Have two years documented pertinent experience in a laboratory performing assisted reproductive technology procedures. This experience should induce familiarity with laboratory quality control, sterile technique and cell culture; and

ii. Have documented training of at least 1,000 hours in an embryo laboratory which includes performing, at a minimum, each laboratory component of the human assisted reproductive technology cycle 60 times.

Note: Documented experience and training may be acquired concurrently.

d. In addition to meeting the qualification requirements above, obtain at least 12 contact hours of continuing education annually in assisted reproductive technology or clinical laboratory practice.

2. Laboratory Director Responsibilities. The laboratory director is responsible for the overall operation, administration, and technical and scientific oversight of the embryo laboratory, including the employment of personnel who are qualified to perform assisted reproductive technology laboratory procedures, and record and report procedural outcomes promptly, accurately and proficiently. If the laboratory director delegates performance of his or her responsibilities, he or she must do so in writing. The laboratory director remains responsible for ensuring that all delegated duties are properly performed. The laboratory director must—

a. Be accessible to the laboratory to provide onsite, telephone or electronic consultations as needed.

b. Ensure that the physical plant (space, facilities and equipment) and environmental conditions of the laboratory are appropriate for the laboratory procedures performed and provide a safe environment in which employees and other occupants are protected from physical, chemical, electrical and biological hazards.

c. Establish and monitor a program to ensure that aseptic conditions are maintained in the laboratory, as appropriate, for the assisted reproductive laboratory procedures to be performed.

d. Ensure that assisted reproductive technology laboratory procedures selected or developed by the laboratory are appropriate to provide quality patient care.

e. Ensure that adequate systems are in place to maintain patient confidentiality throughout those parts of the assisted reproductive technology process under the laboratory's control.

f. Ensure that an approved procedure manual is available to all personnel responsible for performing assisted reproductive technology laboratory procedures.

g. Establish and monitor a quality management program to assure the quality of laboratory services provided and to identify failures in quality as they occur.

h. Ensure that all necessary corrective actions are taken, documented and reviewed for effectiveness whenever failures in quality are identified.

i. Provide consultation to physicians and others, as appropriate, regarding the clinical significance of laboratory findings.

j. Employ a sufficient number of qualified personnel with the appropriate education and documented experience or training to supervise and perform the work of the laboratory. Written records of the qualifications of all personnel must be maintained.

k. Ensure that all personnel receive appropriate training for the assisted reproductive technology laboratory procedures to be performed, and have demonstrated that they can perform the procedures reliably prior to working on patients' specimens. All training activities must be documented.

l. Ensure that all personnel acquire, on an annual basis, the required number of continuing education contact hours. A record of each employee's continuing education participation must be maintained.

m. Specify, in writing, the responsibilities and duties of each person who performs assisted reproductive technology laboratory procedures, identifying which procedures each individual is authorized to perform and whether supervision is required.

n. Ensure that policies and procedures are established for monitoring each employee's continued competence to perform assisted reproductive technology laboratory procedures, and whenever necessary, provide remedial training or additional continuing education to improve skills.

o. Ensure that performance evaluations for each employee are performed and documented, at a minimum, annually.

3. Laboratory Supervisor Qualifications. The embryo laboratory must have one or more qualified supervisors who, under the direction of the laboratory director, provide day-to-day supervision of laboratory personnel performing assisted reproductive technology laboratory procedures. In the absence of the director, the laboratory supervisor must be responsible for the proper performance of all assisted reproductive technology laboratory procedures. The laboratory supervisor must—

a. Possess a current license issued by the State in which the laboratory is located, if such licensing is required.

b. Meet the qualification requirements for an embryo laboratory director under paragraph 1. of this section, or meet the following:

i. Have an earned master's or bachelor's degree in a chemical, physical, biological, clinical laboratory or medical technology science from an accredited institution; and

ii. Have documented training which includes performing, at a minimum, each laboratory component of the human assisted reproductive technology cycle 60 times.

c. If not qualified under subparagraph 3.b. of this section, be the supervisor of an embryo laboratory on or before [date of publication of final notice] and have documented training which includes performing, at a minimum, each laboratory component of the human assisted reproductive technology cycled 60 times.

d. In addition to meeting the qualification requirements above, obtain at least 12 contact hours of continuing education annually in assisted reproductive technology or clinical laboratory practice. If also serving as the laboratory director, continuing education obtained to meet the laboratory director qualification requirements may be used to meet this requirement.

4. Laboratory Supervisor Responsibilities. The laboratory supervisor is responsible for day-to-day supervision or oversight of the embryo laboratory operation and personnel performing assisted reproductive technology laboratory procedures. The laboratory supervisor must—

a. Be accessible to laboratory personnel at all times when assisted

reproductive technology laboratory procedures are performed to provide on-site, telephone or electronic consultation to resolve technical problems in accordance with policies and procedures established by the laboratory director.

b. Provide day-to-day supervision of laboratory personnel performing assisted reproductive technology laboratory procedures.

c. Ensure direct and constant supervision of personnel undergoing training in assisted reproductive technology laboratory procedures to fulfill the qualification requirements for a reproductive biologist.

d. Perform laboratory director responsibilities as authorized in writing by the laboratory director.

5. Reproductive Biologist Qualifications. Each individual performing assisted reproductive technology laboratory procedures must—

a. Possess a current license issued by the State in which the laboratory is located, if such licensing is required.

b. Meet the qualification requirements for an embryo laboratory director under paragraph 1. of this section, laboratory supervisor requirements under paragraph 3. of this section, or meet the following:

i. Have an earned bachelor's degree in a chemical, physical, biological, clinical laboratory or medical technology science from an accredited institution; and

ii. Have documentation of training appropriate for the assisted reproductive technology laboratory procedure(s) to be performed before performing the procedure(s) without direct and constant supervision on patient specimens. Training must include performing the assisted reproductive technology laboratory procedure(s), at a minimum, 30 times under direct and constant supervision.

c. If not qualified under subparagraph 5.b. of this section, be performing assisted reproductive technology laboratory procedures in an embryo laboratory on or before [date of publication of final notice] and have documentation of training appropriate for the assisted reproductive technology laboratory procedure(s) to be performed before performing the procedure(s) without direct and constant supervision on patient specimens. Training must include performing the assisted reproductive technology laboratory procedure(s), at a minimum, 30 times under direct and constant supervision.

d. In addition to meeting the qualification requirements above, obtain at least 12 contact hours of continuing education annually in assisted reproductive technology or clinical laboratory practice. If also serving as the laboratory director or laboratory supervisor, continuing education obtained to meet the laboratory director or laboratory supervisor qualification requirements may be used to meet this requirement.

6. Reproductive Biologist Responsibilities. The reproductive biologist is responsible for performing assisted reproductive technology laboratory procedures, and recording and reporting procedural outcomes promptly, accurately and proficiently. The reproductive biologist must—

1. Perform only those assisted reproductive technology laboratory procedures that are authorized by the laboratory director, and for which training has been documented. If appropriate training has not been documented, perform assisted reproductive technology laboratory procedures only under direct and constant supervision.

b. Follow the laboratory's established policies and procedures for performing assisted reproductive technology laboratory procedures, and recording and reporting procedural outcomes.

c. Adhere to the laboratory's quality management policies, document all specimen and procedure management, quality control and quality assurance activities, and equipment and instrument calibration, function verification and maintenance performed.

d. Identify problems that may adversely affect the performance of assisted reproductive technology laboratory procedures and either immediately notify the laboratory supervisor or director, or correct the problem(s) in accordance with the laboratory's established policies and procedures and notify the laboratory supervisor or director of the problem(s) and the corrective action(s) taken.

e. Document all corrective actions taken when failures in quality are identified.

B. Facilities and Safety

The embryo laboratory must provide adequate space and the appropriate environmental conditions to ensure safe working conditions and quality performance of assisted reproductive technology laboratory procedures.

1. Requirements for Physical Space and Utilities. The laboratory must be constructed and arranged so that—

a. The laboratory space, ventilation, and utilities are adequate for the volume of assisted reproductive technology laboratory procedures performed during peak periods of activity.

b. Assisted reproductive technology laboratory procedures are carried out in a secure area with access limited to authorized personnel.

c. Movement of patient specimens and traffic around sensitive work areas is limited in order to reduce the potential for spilled or lost specimens.

d. Incubator and storage space are configured to ensure positive specimen identification and minimize the potential for errors due to misplaced specimens or retrieval of the wrong specimen.

e. Activities requiring sterile technique such as the handling, assessment and culturing of human oocytes and embryos, are performed under aseptic conditions in an area that is physically isolated from other laboratory activities.

f. All laboratory work areas (does not include administrative areas) are easily washed and disinfected.

g. The laboratory and administrative space are conveniently located, but are separate from patient areas.

h. Immediate communication can occur with the oocyte retrieval and transfer room(s).

2. Safety Requirements. Safety precautions, policies, and procedures must be established and posted, or readily available to all personnel, to ensure protection from physical, chemical, electrical and biological hazards.

a. All personnel must be knowledgeable about and abide by applicable Federal, State and local regulations regarding protection from physical, chemical, electrical and biological hazards.

b. Disposable materials should be used wherever possible for all procedures that involve exposure to tissue and body fluids.

c. The laboratory must store and dispose of tissue, body fluids, or other potentially biohazardous materials as outlined in Federal, State and local regulations.

d. Toxic chemicals, including toxic cleaning materials, must be used in a manner that is not harmful to patient specimens.

e. Radioisotopes must not be used in a laboratory that performs assisted reproductive technology procedures.

f. The laboratory must have an emergency plan appropriate for its geographical location which specifies the actions to be taken to protect employees, patients, visitors and specimens in case of a natural disaster or other potentially devastating event.

3. Laboratory Animals. If laboratory animals are used, all applicable Federal, State and local regulations regarding animal care and use must be met. Animal specimens must be—

a. Handled and stored separately from human specimens.

b. Incubated separately from human specimens, unless program/institutional approval is given for an application involving specific cell lines, i.e., animal coculture.

C. Quality Management

The embryo laboratory must establish and follow written policies and procedures for a comprehensive quality management program that is designed to monitor and evaluate the ongoing and overall quality of the assisted reproductive technology laboratory procedures performed and services provided. All quality management activities must be documented.

1. Procedure Manual. A written procedure manual including instructions for all assisted reproductive technology laboratory procedures performed must be available in the embryo laboratory and followed by all laboratory personnel. The written procedures must be in sufficient detail to assure reproducibility and competence in the performance of the laboratory procedures.

a. The procedure manual include the following, when applicable to the assisted reproductive technology laboratory procedure performed:

i. Principle (scientific basis) of the assisted reproductive technology laboratory procedure;

ii. Clinical significance of the assisted reproductive technology laboratory procedure;

iii. Requirements for specimen collection and handling;

iv. Step-by-step instructions for performance of the assisted reproductive technology laboratory procedure;

v. Preparation of required reagents, culture media, solutions, or other special supplies;

vi. Equipment and instrumentation required for the performance of the procedure, including necessary function checks and calibration protocols;

vii. Quality control procedures to be performed, including frequency of control testing, and criteria for acceptability;

viii. Remedial action to be taken when function checks, calibration or control results do not meet the laboratory's criteria for acceptability;

ix. Calculations and interpretation of procedural outcomes, including criteria for acceptable and unacceptable outcomes, and procedural outcomes requiring special notification;

x. The laboratory's system for recording and reporting procedural outcomes;

xi. Limitations in methodologies, including interfering substances and precautions;

xii. Pertinent literature references;

xiii. Description of the course of action to be taken if required equipment or instrumentation malfunctions or is inoperable;

xiv. Criteria for the referral or transfer of specimens to another embryo laboratory for the performance of an assisted reproductive technology laboratory procedure, including procedures for specimen submission and handling; and

xv. Procedure for safe and appropriate specimen disposal.

b. Manufacturers' instrument/equipment manuals and package inserts may be used, when applicable, to meet the requirements of this section.

i. Any of the items listed under subparagraph 1.a. of this section, not provided by the manufacturer must be provided by the laboratory.

ii. Any modifications to, or deviations from, the manufacturer's instructions, must be clearly documented and provided in the procedure manual.

c. Appropriate reference materials (e.g., slides, pictures, textbooks, etc.) should be available in the laboratory to allow, as needed, comparison with patient specimens.

d. Procedures must initially be approved, signed and dated by the laboratory director, and must thereafter, be reviewed by the laboratory director on an annual basis.

e. Procedures must be re-approved, signed and dated if the directorship of the laboratory changes.

f. Each change in a procedure must be approved, signed and dated by the current laboratory director.

g. The laboratory must retain a copy of each procedure with the dates of initial use and discontinuance in accordance with the requirements of section D., Maintenance of Records, of this part.

2. Equipment and Instrument Maintenance/Calibration. The embryo laboratory must perform and document equipment and instrument maintenance and, as applicable, calibration, and function verification that include(s) electronic, mechanical and operational checks necessary for the proper performance of assisted reproductive technology laboratory procedures. The laboratory must—

a. Have sufficient equipment for the type and volume of assisted reproductive technology laboratory procedures performed, which may include but is not limited to, incubators, freezers, refrigerators, hoods, thermometers, centrifuges, microscopes, pipettes, and warming devices.

b. Establish and follow written policies and procedures for equipment and instrument maintenance and, as applicable, calibration, and function checks, that ensure proper performance of the equipment and instruments used in assisted reproductive technology laboratory procedures.

The laboratory must—

i. Define acceptable limits for equipment and instrument maintenance and, as applicable, calibration, and function checks prior to their use in assisted reproductive technology laboratory procedures.

ii. Perform maintenance and, as applicable, calibration, and function checks in accordance with the equipment/instrument manufacturer's instructions and at the frequency required to ensure adequate performance of the equipment and instruments used in assisted reproductive technology laboratory procedures.

iii. Monitor environmental conditions, using an independent measuring device, in critical equipment, including but not limited to, incubators, controlled-rate freezers and liquid nitrogen storage tanks, at a frequency that ensures timely detection of conditions that are deleterious to specimens. These conditions include, if applicable:

A. Temperature;

B. Humidity;

C. Gas concentration; and

D. Liquid nitrogen levels.

iv. Maintain an alarm system on critical equipment that will immediately detect when pre-established limits for the environmental conditions listed in subparagraph 2.b.iii. (excluding humidity), of this section, are exceeded. The alarm system must be:

A. Checked periodically to ensure that it will be triggered when preestablished limits for environmental conditions are exceeded; and

B. Monitored 24 hours a day in the laboratory or at a remote site.

v. Protect critical equipment and instrumentation from fluctuations and interruptions in electrical current.

vi. Have available emergency back-up capability for critical equipment, including but not limited to, incubators, refrigerators and controlled-rate freezers.

vii. Document all maintenance, calibration, and function checks performed.

c. Identify, investigate, and correct problems with equipment or instrumentation that may adversely affect the performance of assisted reproductive technology laboratory procedures.

d. Document all corrective actions taken when problems with equipment or instrumentation are identified.

3. Labeling, Handling, and Storage of Chemicals, Reagents, Solutions, Culture Media, Materials and Supplies. The embryo laboratory must label, handle and store chemicals, reagents, solutions, culture media, materials and supplies in a manner that ensures their positive identification, optimum integrity and appropriate reactivity in assisted reproductive technology laboratory procedures. The laboratory must—

a. Have a mechanism for ensuring sufficient chemicals, reagents, solutions, culture media, materials and supplies for the type and volume of assisted reproductive technology laboratory procedures performed (e.g., inventory maintenance program).

b. Define criteria that are essential for proper storage of chemicals, reagents, solutions, and culture media, including the following, as applicable:

i. Temperature;

ii. Humidity; and

iii. Other conditions necessary for proper storage.

c. Label all chemical, reagents, solutions, and culture media to indicate the following, as applicable:

i. Identity, and when significant, batch or lot number, titer, strength, or concentration;

ii. Recommended storage conditions;

iii. Expiration date; and

iv. Other pertinent information required for proper use.

d. Verify that materials which come in contact with sperm, oocytes, and embryos have been tested and found to be non-toxic to sperm, oocytes, and embryos. Documentation supplied by the manufacturer may be used to meet this requirement.

e. Maintain records documenting the batch or lot number, date of receipt or preparation, and date placed in use, for all chemicals, reagents, solutions, and culture media.

f. Prepare, store, and handle chemicals, reagents, solutions, and culture media in a manner to ensure that they are not used when they have exceeded their expiration date, have deteriorated, or are of substandard quality.

4. Specimen and Procedure Management. The embryo laboratory must have written protocols and criteria for the laboratory procedures performed and employ and maintain a system that provides for proper patient identification and preparation; specimen collection, identification, and handling (transportation, processing, storage, preservation); and accurate recording and reporting of laboratory procedural outcomes.

a. The laboratory must have available and follow written policies and procedures for each of the following:

i. Instructions for patient preparation, if applicable;

ii. Methods used for the positive identification of patients;

iii. Specimen collection;

iv. The labeling of patient specimens to ensure positive identification from the time of specimen collection through final disposition or disposal;

v. Criteria for maintaining specimen integrity and viability during transport, storage and the performance of assisted reproductive technology laboratory procedures including, as applicable, requirements for:

A. Temperature;

B. Humidity; and

C. Gas concentration; and

vi. Criteria for specimen acceptability and, as appropriate, instructions for special handling of suboptimal specimens.

b. The laboratory must have adequate systems in place to ensure patient confidentiality throughout those parts of the assisted reproductive technology process that are under the laboratory's control.

c. The laboratory may perform assisted reproductive technology laboratory procedures only at the written or electronic request of an authorized person. Oral requests for changes to the original written or electronic request must be documented by the laboratory and followed by receipt of written or electronic documentation from an authorized person within 24 hours of the oral request. The patient's chart or medical record may be used for written authorization, but must be available to the laboratory at the time of the laboratory procedure. Written or electronic authorization must include the following:

i. The patient's name and unique identifier;

ii. When applicable, the partner's or donor's name or other unique identifier;

iii. The name and address or other suitable identifiers of the authorized person requesting the procedure, and the name of the individual communicating the request;

iv. The procedure(s) to be performed;

v. The date(s) and time(s) the procedures(s) is to be performed; and

vi. Any additional information relevant and necessary to the performance of the procedure(s) including verification of informed patient consent, and as applicable, special handling instructions and any instructions stipulated by the patient.

d. As applicable, the laboratory must establish and follow written protocols, including documented criteria, for—

i. Evaluation and assessment of oocyte morphology and maturity, fertilization, and embryo quality.

ii. Insemination schedule relative to oocyte maturity.

iii. Volume, numbers, and quality of sperm used for insemination of each oocyte.

iv. Disposition of oocytes with an abnormal number of pronuclei.

v. Disposition of excess oocytes.

vi. The time period following insemination for examination of oocytes to determine fertilization.

vii. Micromanipulation of oocytes and embryos.

viii. Re-insemination of oocytes.

ix. Cryopreservation of specimens.

x. Embryo transfer procedures, which include the following:

A. The length of time embryos are cultured prior to transfer;

B. The medium and protein supplementation used for transfer, as applicable;

C. Disposition of excess embryos;

D. Types of catheters available, with circumstances for use of each;

E. Method of transfer; and

F. Technique for post transfer catheter check.

e. The laboratory must maintain a record system, for each patient's assisted reproductive technology cycle, to ensure reliable identification and control of the patient's specimens as they are received and the laboratory procedure(s) performed. The record system must include documentation of the information specified in subparagraph 4.c. of this section, and—

i. The laboratory accession number, or other unique identification of the specimen.

ii. The date and time of specimen receipt into the laboratory and, as applicable, the number of oocytes retrieved and assessment of each oocyte or cumulus corona complex.

iii. The condition and disposition of all specimens including those that do not meet the laboratory's criteria for acceptability.

iv. The records and dates of all laboratory handling and procedures, including the following, as applicable:

A. Semen assessment before and after washing and concentration for insemination;

B. Outcome of insemination or micromanipulation procedures (e.g., fertilization);

C. Outcome of any culture (e.g., cleavage);

D. Relative timing of protocol events (incubation hours, etc.);

E. Assessment of the developmental status and quality of all embryos at transfer;

F. Verification that no embryos remain in the catheter following completion of transfer;

G. The identity and lot numbers of the media and media supplements used in each phase of the procedure; and

H. The identity of the laboratory personnel who handled the specimens and performed the procedures.

f. The laboratory must have a mechanism in place for promptly providing the authorized person who ordered the procedure a complete summary of all procedural outcomes and the occurrence of any unusual or abnormal events, including the condition and disposition of specimens that do not meet the laboratory's criteria for acceptability.

g. The laboratory must have an accurate and reliable method of tracking cryopreserved specimens ensuring positive identification of each cryopreservation container. In addition, the cryopreservation container must be labeled with the patient's name or unique identifier, and the date the specimen(s) was frozen. All labeling must be of a permanent nature. Documentation must be maintained in duplicate log books or files for each liquid nitrogen storage tank and include the following:

i. The patient's name or other unique identifier;

ii. A description of each cryopreservation container's contents;

iii. The freezing protocol used;

iv. Date frozen;

v. Type and location of cryopreservation container (e.g., straw, vial); and

vi. Final disposition/disposal of the cryopreserved specimen(s).

h. If cryopreserved specimens are received from or transferred to other facilities, the laboratory must have written policies and procedures for the receipt/transfer of cryopreserved specimens. Policies and procedures must include appropriate methods of transportation and the method for verifying the identification and number of cryopreservation containers received/transferred. In addition, documentation of the freezing protocol used, and copies of patient release forms and applicable log sheets must accompany the cryopreserved specimens.

i. Clinical laboratory testing on specimens obtained by the embryo laboratory must be performed in accordance with the regulations implementing CLIA at 42 CFR Part 493. In addition—

i. The referring embryo laboratory must not revise results or information directly related to the interpretation of results provided by the testing laboratory.

ii. The referring embryo laboratory may permit the testing laboratory to send the test result(s) directly to the authorized person who initially requested the testing. The embryo laboratory must retain or be able to produce an exact duplicate of the testing laboratory report.

iii. The authorized person who orders a clinical laboratory test must be notified by the referring embryo laboratory of the name and address of the testing laboratory.

5. Method Validation. All assisted reproductive technology procedures selected or established by the embryo laboratory must be validated by the laboratory prior to routine patient use. The laboratory must determine appropriate performance measures and demonstrate that the procedure, when performed by the laboratory's staff, meets or exceeds acceptable levels of performance as defined by the laboratory. In addition, the laboratory must periodically verify, through its quality management activities (as specified in this part), each procedure's continued acceptable level of performance. All validations must be documented.

6. Quality Control. The embryo laboratory must establish and follow written quality control procedures at a frequency appropriate to monitor the reliability of the assisted reproductive technology laboratory procedures performed. All quality control activities must be documented. The laboratory must—

a. Establish acceptability criteria for all quality control procedures.

b. Perform and document the remedial action(s) taken when problems are identified or quality control procedures do not meet the laboratory's criteria for acceptability.

c. For each laboratory procedure performed and, as applicable, culture media preparation—

i. Define and use the appropriate grade of water required.

ii. Periodically monitor water quality to ensure that its quality continues to meet the laboratory's specifications for its intended use. As applicable, adherence to manufacturers' storage and handling requirements, and expiration dates may meet this requirement.

d. As applicable, have and follow a written procedure for the preparation, washing and sterilization of glassware used in the laboratory's procedures that includes the following:

i. Rinsing all washable glassware with distilled or deionized water prior to drying; and

ii. If detergent is used, testing washed items for detergent removal.

e. Have and follow a written procedure for the quality control of culture media which includes a visual check for physical damage to the media container and evidence of media contamination prior to its use and—

i. For each batch of culture media prepared in-house, document the quality of the media by testing—

A. pH.

B. Osmolality.

C. Culture suitability using an appropriate bioassay system.

ii. For each batch of commercially prepared culture media—

A. Verify and document the quality of the media with an appropriate bioassay system. Documentation of quality control performed by the manufacturer may meet this requirement.

B. Follow the manufacturer's specifications for using the media.

iii. Test and document the quality of any media supplementation (e.g., protein), when appropriate, using a bioassay system.

iv. Test blood based media supplements (e.g., human fetal cord serum) prepared in-house with a FDA licensed, approved, or cleared test and show the supplement to be negative/nonreactive for the following communicable diseases prior to use:

A. Human immunodeficiency virus, Type 1 (e.g., anti-HIV-1);

B. Human immunodeficiency virus, Type 2 (e.g., anti-HIV-2);

C. Hepatitis B virus (e.g., HbsAg);

D. Hepatitis C virus (e.g., anti-HCV);

E. Human T-cell lymphotrophic virus, Type I (e.g., anti-HTLV-I); and

F. Such other diseases that may be later added to this list.

NOTE: A batch of media (solid, semi-solid, or liquid) consists of all tubes, plates, or containers of the same medium prepared at the same time in the laboratory; or, if received from an outside source of commercial supplier, consists of all of the plates, tubes or containers of the same medium that have the same lot numbers and are received in a single shipment.

7. Quality Assurance. The embryo laboratory must establish and follow written policies and procedures for a quality assurance program to monitor the quality of services provided by the laboratory, and resolve problems that are identified. The laboratory must have a mechanism to evaluate the effectiveness of its policies and

procedures; identify and correct problems; and assure the adequacy and competency of the staff. As necessary, the laboratory must revise its policies and procedures based on the results of those evaluations. All quality assurance activities must be documented.

a. The laboratory must have an ongoing mechanism for monitoring, evaluating and revising, if necessary, based on the results of its evaluations, the following:

i. The criteria established for patient identification and specimen collection, identification, and handling;

ii. The information requested and maintained on each patient and for each laboratory procedure performed for its completeness, relevance and necessity;

iii. The timeliness and accuracy of recording and reporting procedural outcomes;

iv. The accuracy and reliability of tracking cryopreserved specimens;

v. The appropriate storage and retrieval of laboratory records such as procedural outcomes, and other data recorded and maintained; and

vi. The corrective actions taken for—

A. Problems identified during the evaluation of equipment and instrument maintenance, calibration, and function check data.

B. Problems identified during the evaluation of quality control data.

C. Errors detected in patient or specimen identification and handling.

D. Clerical or analytical errors detected in laboratory records.

b. The embryo laboratory must have an ongoing mechanism to—

i. Identify and evaluate laboratory procedural outcomes that appear inconsistent with the patient or donor history.

ii. Track and evaluate laboratory procedural outcomes including, but not limited to, fertilization rates, cleavage rates and embryo quality.

iii. Maintain a file of adverse reactions occurring as a result of errors made during the performance of assisted reproductive technology laboratory procedures.

iv. Evaluate the effectiveness of its policies and procedures for assuring employee competence in performing assisted reproductive technology laboratory procedures.

v. Document problems that occur as a result of a breakdown in communication between the laboratory and referring physicians or others involved in the assisted reproductive technology procedures, and take corrective actions to resolve the problems and minimize future communications breakdowns.

vi. Assure that all complaints and problems reported to the laboratory are documented. Investigations of complaints must be made, when appropriate, and as necessary, corrective actions must be instituted.

vii. Document and assess problems identified during quality assurance reviews, and discuss them with the laboratory staff and, as appropriate, referring physicians and others involved in the assisted reproductive technology procedures. The laboratory must take the necessary corrective actions to prevent recurrences.

D. Maintenance of Records

The embryo laboratory must retain records of all of its policies and procedures; personnel employment, training, evaluations and continuing education activities; and quality management activities specified in this part.

1. Record Format. Laboratory records must be accurate, indelible, and legible. Records may be retained electronically, or as original paper records, or as true copies such as photocopies, microfiche, or microfilm.

2. Retention Period. Laboratory records must be retained in accordance with time frames specified by applicable Federal, State and local laws or for ten years beyond the date of final disposition or disposal of all specimens obtained during each patient's assisted reproductive technology cycle, whichever is later. Records must be retained on site for two years. Note: Transfer of cryopreserved specimens to another facility constitutes final disposition for the transferring facility.

3. Record Retrieval. Laboratory records must be maintained in a manner which ensures timely, accurate and reliable retrieval.

4. Laboratory Closure. In the event that the laboratory ceases operation, the laboratory must make provisions for these records to be maintained for the time frame required above.

Addendum

References

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2. The American Association of Tissue Banks. Standards for Tissue Banking. The American Association of Tissue Banks, McLean, Virginia, 1996.

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5. California Health and Safety Code, Division 2, Chapter 4.1—Tissue Banks. State of California, Department of Health Services, Berkeley, California, 1992.

6. Centers for Disease Control and Prevention. Reporting of Pregnancy Success Rates from Assisted Reproductive Technology Programs. 62 FR 45259, Aug. 26, 1997.

7. Code of Federal Regulations, Title 42, Chapter IV, Part 493—Laboratory Requirements.

8. The College of American Pathologists/American Society for Reproductive Medicine Reproductive Laboratory Accreditation Program. The College of American Pathologists, Northfield, Illinois, 1996.

9. The Fertility Clinic Success Rate and Certification Act of 1992 (Public Law 102–493).

10. Keel BA and BW Webster. CRC Handbook of the Laboratory Diagnosis and Treatment of Infertility. CRC Press, Inc., Boca Raton, Florida, 1990.

11. Rules and Regulations of the State of New York, Part 52 of Title 10 (Health). Tissue Banks and Non-transplant Anatomic Banks. State of New York Department of Health, Albany, New York, 1992.

12. Senate Report 102–452 on H.R. 4773. Fertility Clinic Success Rate and Certification Act of 1992. 102d Congress, 2d Session, 1992.

13. Veeck LL. The Gamete Laboratory: Design, Management and Techniques. pp. 798–820 in: Infertility: Evaluation and Treatment. Edited by WR Keye, RJ Chang, RW Rebar and MR Soules. WB Saunders, Philadelphia, Pennsylvania, 1995.

[FR Doc. 98–29374 Filed 11–5–98; 8:45 am]

BILLING CODE 4163–18–M

Friday
November 6, 1998

Part VII

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program: Closing Date; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 981028269–8269–01]

RIN 0660–ZA05

Public Telecommunications Facilities Program: Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program (PTFP).

Applicants for matching grants under the PTFP must file their applications on or before January 14, 1999. NTIA anticipates making grant awards by September 30, 1999. NTIA shall not be liable for any proposal preparation costs.

Approximately $21 million is available for FY 1999 for PTFP grants pursuant to P.L. 105–277, the ''Department of Commerce and Related Agencies Appropriations Act, 1999.'' The amount of a grant award by NTIA will vary, depending on the approved project. For fiscal year 1998, NTIA awarded $19.8 million in funds to 115 projects. The awards ranged from $3,000 to $978,033.

The applicable Rules for the PTFP were published on November 8, 1996. These rules, 15 CFR Part 2301 *et seq.* will be in effect for FY 1999 PTFP applications. Certain requirements of the PTFP at 15 CFR Part 2301 are modified in this Notice. Copies of the 1996 Rules will be distributed as part of the PTFP Application Kit and applicants are cautioned not to use older versions of the PTFP Rules which were published in 1991.

Parties interested in applying for financial assistance should refer to these rules and to the authorizing legislation (47 U.S.C. §§ 390–393, 397–399b) for additional information on the program's goals and objectives, eligibility criteria, evaluation criteria, and other requirements.

DATES: Pursuant to 15 CFR § 2301.8(b), the Administrator of NTIA hereby establishes the closing date for the filing of applications for grants under the PTFP. The closing date selected for the submission of applications for 1999 is January 14, 1999. Applications must be received prior to 8 p.m. on or before January 14, 1999. Applicants sending an application should submit an original and five copies to the place indicated in the **ADDRESS** section below. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the Closing Date and Time. NTIA will not accept mail delivery of applications posted on the Closing Date or later and received after the above deadline. However, if an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date, or (2) significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline. Applicants submitting applications by hand delivery are notified that, due to security procedures in the Department of Commerce, all packages must be cleared by the Department's security office. Entrance to the Department of Commerce Building for security clearance is on the 15th Street side of the building. Applicants whose applications are not received by the deadline are hereby notified that their applications will not be considered in the current grant cycle and will be returned to the applicant. See 15 CFR § 2301.8(c); but see also 15 CFR § 2301.26. NTIA will also return any application which is substantially incomplete, or when the Agency finds that either the applicant or project is ineligible for funding under 15 CFR § 2301.3 or § 2301.4. The Agency will inform the applicant of the reason for the return of any application.

ADDRESSES: To obtain an application package, submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4625, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dennis R. Connors, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via Internet (http://www.ntia.doc.gov).

SUPPLEMENTARY INFORMATION:

I. Application Forms and Regulations

To apply for a PTFP grant, an applicant must file an original and five copies of a timely and complete application on a current form approved by the Agency. The current application form will be provided to applicants as part of the application package. This form expires on November 30, 2000, and no previous versions of the form may be used. (In accordance with the Paperwork Reduction Act, the current application form has been cleared under OMB control no. 0660–0003.) Applications submitted by facsimile or electronic means are not acceptable.

All persons and organizations on the PTFP's mailing list will be sent a copy of the current application form and the Final Rules. Those not on the mailing list may obtain copies by contacting the PTFP at the telephone and fax numbers or at the Internet or mailing addresses noted above. Prospective applicants should read the Final Rules carefully before submitting applications. Applicants whose applications were deferred in FY 1998 will be mailed pertinent PTFP materials and instructions for requesting reactivation of their applications.

Based upon NTIA's experience in implementing the PTFP during the 1998 grant round, NTIA has determined that it is in the best interests of NTIA and applicants to modify or waive certain requirements contained in the PTFP regulations at 15 CFR Part 2301. These changes, which are applicable to the FY 1999 PTFP applications and resulting awards only, are indicated in italics below. Dependent upon the effectiveness of these changes, amendments may be made to the PTFP regulations to implement these changes.

Section 2301.10 Applications Resulting From Catastrophic Damage or Emergency Situations

Section 2301.10 provides for submission of applications resulting from catastrophic damage or emergency situations. Section 2301.10(a) requires that an emergency ''application may be filed with a request for a waiver of the Closing Date.'' Section 2301.10(f) requires that emergency ''applications will be subject to the same evaluation and selection process followed for applications received in the normal application cycle.'' This section has been revised for FY 1999 PTFP applicants to clarify that (1) an emergency application may be filed at any time, (2) an emergency application will be evaluated according the evaluation criteria set forth on § 2301.17(b) and the degree to which the application satisfies the purposes of this section, and (3) the selection process that will be used in determining a grant award.

(a) For FY 1999 PTFP applicants, when an eligible broadcast applicant

suffers catastrophic damage to the basic equipment essential to its continued operation as a result of a natural or manmade disaster, or as the result of significant equipment failure, and is in dire need of assistance in funding replacement of the damaged equipment, it may file an emergency application for PTFP funding at any time. This section is limited to equipment essential to a station's continued operation such as transmitters, tower, antennas, STL's or similar equipment which, if the equipment failed, would result in a complete loss of service to the community.

(b) The emergency application must set forth the circumstances that prompt the request and be accompanied by appropriate supporting documentation.

(c) An application may be granted an award only if it is determined that (1) the emergency satisfies the requirements of subparagraph (a) of this section, and (2) the applicant either carried adequate insurance or had acceptable self-insurance coverage.

(d) Applicants claiming significant failure of equipment must document the circumstances of the equipment failure and demonstrate that the equipment has been maintained in accordance with standard broadcast engineering practices.

(e) Applications filed and accepted pursuant to this section must contain all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

(f) The application will be subject to the evaluation criteria set forth in 2301.17(b). The PTFP Director takes into account program staff evaluations (including the outside reviewers) the availability of funds, the type of project and broadcast priorities set forth at 2301.4(b), and whether the applicant has any current NTIA grants. The Director presents recommendations to the OTIA Associate Administrator for review and approval. Upon approval by the OTIA Associate Administrator, the Director's recommendation will be presented to the Selecting Official, the NTIA Administrator. The Administrator makes final award selections taking into consideration the Director's recommendation and the degree to which the application satisfies the program's stated purposes set forth at 2301.1(a) and (c) and this section.

Section 2301.11 Service of Applications

Section 2301.11 provides that: ''On or before the closing date, all new or deferred applicants must serve a summary copy of the application on the following Agencies:

(a) In the case of an application for a construction grant for which FCC authorization is necessary, the Secretary, Federal Communications Commission * * *

(b) The state telecommunications agency(-ies) if any, having jurisdiction over the development of broadcast and/or non broadcast telecommunications in the state(s) and community(-ies) to be served by the proposed project * * *

(c) The state office established to review applications under Executive Order 12372.

§ 2301.11(a)

For the FY 1999 PTFP, applicants are not required to submit copies of their PTFP applications to the FCC, nor will they be required to submit copies of the FCC transmittal cover letters as part of their PTFP applications. NTIA routinely notifies the FCC of applications submitted for funding which require FCC authorizations.

§ 2301.11(b)

For the FY 1999 PTFP, applicants for distance learning projects are not required to notify every state telecommunications agency in a potential service area. NTIA has found that state telecommunication agency input has been useful with regard to broadcast projects, but has received little input from state agencies with regard to distance learning projects. Since many distance learning applications propose projects which are nationwide in nature, NTIA believes that the requirement to provide a summary copy of the application in every state telecommunications agency in a potential service area is unduly burdensome to applicants. NTIA, however, does expect that distance learning applicants will submit documentation that they have coordinated their project with appropriate state telecommunications agencies in their service area.

Section 2301.12 Federal Communications Commission Authorizations

Section 2301.12(a) provides, in part, that ''Each applicant whose project requires FCC authorization must file an application for that authorization on or before the closing date. NTIA recommends that its applicants submit PTFP-related FCC applications to the FCC at least 60 days prior to the PTFP closing date.''

For the FY 1999 PTFP, applicants may submit applications to the FCC after the closing date, but do so at their own risk. Applicants are urged to submit their FCC applications with as much time before the PTFP closing date as possible. No grant will be awarded for a project requiring FCC authorization until confirmation has been received by NTIA from the FCC that the necessary authorization will be issued.

Section 2301.12(b) provides that ''In the case of FCC authorizations where it is not possible or practical to submit the FCC application with the PTFP application, such as C-band satellite uplinks * * * a copy of the FCC application as it will be submitted to the FCC, or the equivalent engineering data, must be included in the PTFP application.''

For the FY 1999 PTFP applications, since there is no potential for terrestrial interference with Ku-band satellite uplinks, grant applicants for Ku-band satellite uplinks may submit FCC applications after a PTFP award is made. Grant recipients for Ku-band satellite uplinks will be required to document receipt of FCC authorizations to operate the uplink prior to the release of Federal funds.

Section 2301.12(d) provides that ''Any FCC authorization required for the project must be in the name of the applicant for the PTFP grant.''

For the FY 1999 PTFP applications, NTIA may accept FCC authorizations that are in the name of an organization other than the PTFP applicant in certain circumstances. Applicants requiring the use of FCC authorizations issued to another organization should discuss in the application Program Narrative why the FCC authorization must be in the other organization's name. NTIA believes that such circumstances will be rare and, in our experience, are usually limited to authorizations such as those for microwave interconnections or satellite uplinks.

Section 2301.12(g) provides that ''If the applicant fails to file the required FCC application(s) by the closing date * * * the Agency may reject or return the application.''

As noted above, for the FY 1999 PTFP applications, NTIA does not require that the FCC applications must be filed by the closing date. While NTIA is permitting submission of FCC applications after the closing date, applicants are reminded that they must continue to provide copies of FCC applications, as they were filed or will be filed, or equivalent engineering data, in the PTFP application so NTIA can properly evaluate the equipment request. These include applications for permits, construction permits and licenses already received for: (1) Construction of broadcast station

(including a digital broadcasting facility), or translator, (2) microwave facilities, (3) ITFS authorizations, (4) SCA authorizations, and (5) requests for extensions of time.

Applicants should note that they must continue to comply with the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to provide a copy of their completed application to the appropriate SPOC on or before January 14, 1999. Applicants are encouraged to contact the appropriate SPOC well before the PTFP closing date.

Indirect costs for *construction* applications are not supported by this program. The total dollar amount of the indirect costs proposed in a *planning* application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice.

All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

(1) *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

(2) *Drug Free Workplace.* Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

(3) *Anti-lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applicants/bidders for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) *Anti-lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' (OMB Control Number 0348–0046) as required under 15 CFR Part 28, Appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the grant award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to the Department. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department in accordance with the instructions contained in the award document.

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal assistance awards. In addition, unsatisfactory performance by the applicant under prior Federal awards may result in the application not being considered for funding.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that they have received, there is no obligation on the part of the Department to cover preaward costs.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) the delinquent account is paid in full; (2) a negotiated repayment schedule is established and at least one payment is received, or (3) other arrangements satisfactory to the Department are made.

Applicants are reminded that a false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Special Note: NTIA has established a policy which is intended to encourage stations to increase from 25 percent to 50 percent the matching percentage for those proposals that call for equipment replacement, improvement, or augmentation (PTFP Policy Statement, (56 FR 59168 (1991)). The presumption of 50 percent funding will be the general rule for the replacement, improvement or augmentation of equipment A showing of extraordinary need (i.e. small community-licensee stations or a station that is licensed to a large institution [e.g., a college or university] documenting that it does not receive direct or in-kind support from the larger institution) or an emergency situation will be taken into consideration as justification for grants of up to 75 percent of the total project cost for such projects.

A point of clarification is in order: NTIA expects to continue funding projects to activate stations or to extend service at up to 75 percent of the total project cost. NTIA will do this because applicants proposing to provide first service to a geographic area ordinarily incur considerable costs that are not eligible for NTIA funding. The applicant must cover the ineligible costs including those for construction or renovation of buildings and other similar expenses.

Since NTIA has limited funds for the PTFP program, the PTFP Final Rules published November 8, 1996 modified NTIA's policy regarding the funding of planning applications. Our policy now includes the general presumption to fund planning projects at no more than 75 percent of the project costs. NTIA notes that most of the planning grants awarded by PTFP in recent years include matching in-kind services and funds contributed by the grantee. The new NTIA policy therefore codifies what already has become PTFP practice. NTIA, however, is mindful that planning grants are sometimes the only resource that emerging community groups have with which to initiate the planning of new facilities in unserved areas. We therefore will continue to award up to 100 percent of total project costs in cases of extraordinary need (e.g. small community group proposing to initiate new public telecommunication service).

We wish to take this opportunity to restate the policy published in the

November 22, 1991, PTFP Policy Statement (56 FR 59168 (1991)), regarding applicants' use of funds from the Corporation for Public Broadcasting (CPB) to meet the local match requirements of the PTFP grant. NTIA continues to believe that the policies and purposes underlying the PTFP requirements could be significantly frustrated if applicants routinely relied upon another Federally supported grant program for local matching funds. Accordingly, NTIA has limited the use of CPB funds for the non-Federal share of PTFP projects to circumstances of ''clear and compelling need'' (15 CFR § 2301.6(c)(2)). NTIA intends to maintain that standard and to apply it on a case-by-case basis.

II. Digital Broadcasting

The FCC's adoption of the Fifth Report and Order in April 1997 requires that all public television stations begin the broadcast of a digital signal by May 1, 2003. NTIA believes that it is critical that all public television applicants fully consider digital technology in any request for equipment replacement submitted to PTFP. Any public television applicant must describe whether it has a plan for digital conversion to meet the FCC's mandate and whether the requested equipment is consistent with that plan. If the applicant is developing a plan for digital conversion, the application should address how the requested equipment will be consistent with the overall objective of converting the facility for digital broadcasting.

NTIA recognizes that digital technology will be an important means for the more efficient creation and distribution of programming in the future. Consequently, public broadcasters seeking to replace, upgrade, and buy new equipment that employs digital technology will be permitted, when appropriate, to use PTFP funds for such purposes.

For fiscal year 1998, NTIA awarded $12.5 million in funds to 50 projects which assisted public television stations in the conversion to digital technologies. The awards ranged from $36,405 to $967,400. The use of digital technologies is also appropriate for public radio facilities. NTIA funded projects for digital STL's and audio production equipment which will assist public radio stations as they prepare for conversion to digital technologies. These digital projects are funded as equipment replacement, improvement or augmentation projects with the presumption of a 50 percent Federal share as noted earlier, unless a showing of extraordinary need for a higher percentage has been made pursuant to § 2301.6(b)(ii) of the PTFP Rules.

III. Distance Learning Projects

The growth of digital technologies provides new opportunities for distance learning projects using both broadcast (e.g., the multi-channel capabilities of DTV) or nonbroadcast facilities. Since 1979, NTIA has funded nonbroadcast distance learning projects through the ''Special Applications'' category as established in § 2301.4(a) of the PTFP Rules. In 1996, NTIA established a similar category for broadcast projects, ''Broadcast/other'' in § 2301.4(b)(6). NTIA encourages applications in either category for innovative or unique distance learning projects which address demonstrated and substantial community needs.

For fiscal year 1998, NTIA awarded $3.67 million in funds to 12 grants for distance learning projects. The awards ranged from $55,452 to $594,936.

The November 22, 1991, PTFP Policy Statement (56 FR 59168 (1991)) mentioned in the Application Forms and Regulations section discussed a number of issues of particular relevance to applicants proposing *nonbroadcast* educational and instructional projects and potential improvement of nonbroadcast facilities. These policies remain in effect and will be available to all PTFP applicants as part of the Guidelines for preparing FY 1999 PTFP applications.

IV. Eligible and Ineligible Costs

Eligible equipment for the 1999 grant round includes apparatus necessary for the production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to studio equipment; audio and video storage, processing, and switching equipment; terminal equipment; towers; antennas; transmitters; remote control equipment; transmission line; translators; microwave equipment; mobile equipment; satellite communications equipment; instructional television fixed service equipment; subsidiary communications authorization transmitting and receiving equipment; cable television equipment; and optical fiber communications equipment.

The following list provides clarification regarding several equipment and other cost areas that will be helpful in preparing applications. NTIA also reserves the right to eliminate any costs, whether specified here or not, that it determines are not appropriate prior to the awarding of a grant.

A. Equipment and Supplies

(1) Buildings and Modifications to Buildings. (a) Eligible: Small equipment shelters that are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities. (b) Ineligible: Purchase or lease of buildings and modifications to buildings, including the renovation of space for studios intended to house eligible equipment; costs associated with removing old equipment.

(2) Land and Land Improvements. (a) Eligible: Site preparation necessary to construct towers and guy anchors for transmission and interconnection equipment. (b) Ineligible: Purchase or lease of land.

(3) Moving Costs. (a) Eligible: Shipping and delivery charges for equipment acquired within the award. (b) Ineligible: Moving costs required by relocation of any facilities.

(4) Reception Equipment. (a) Eligible: Fixed frequency demodulator, as required by good engineering practice for monitoring the off-air transmission of signals; subcarrier demodulator; telemetry transmitters and receivers; satellite receivers; and subcarrier decoders for the handicapped. (b) Ineligible: Consumer-type TV sets and FM receivers.

(5) Tower Modifications. (a) Eligible: Strengthening or modifying a commercial entity's tower to accommodate a public broadcasting entity (structural modifications on towers and/or antenna changes must meet EIA (Electronic Industries Association) and any required local standards). (b) Ineligible: Modifying or strengthening the applicant's tower to accommodate a commercial entity.

(6) Production and Control Room Equipment. (a) Eligible: Standard production studio and control room equipment for TV or radio program production. (b) Ineligible: Consumer-type mixers, tape recorders, turntables, CD players, etc; ancillary production devices such as stopwatches and stop-clocks, building lights, sound effects, scenery and props, cycloramas, sound insulation devices and materials, draperies and related equipment for production use, film and still photography processing, film sound synchronization editing.

(7) Video Equipment. (a) Eligible: Videotape editing and processing equipment that conforms to broadcast-standard quality equipment for field recording and production editing. (b) Ineligible: Consumer level videotape recording formats not accepted in the industry as broadcast-standard quality.

(8) Furniture and Office Equipment. (a) Eligible: Consoles required to mount

equipment such as audio consoles and video switchers. (b) Ineligible: Such items as office furniture, office equipment, studio clocks and systems, blackboards, office intercoms, equipment inventory labels and label-makers, word processors, telephone systems, and printing and duplication equipment.

(9) Expendable Items and Spare Parts. (a) Eligible: A transmitter spare parts kit and one set of final and driver tubes for a transmitter awarded in the grant; a spare parts kit for video tape recorders awarded in the grant. (b) Ineligible: Spare lenses, spare circuit components, spare parts kits for studio equipment, except as noted above; recording tape, film, reels, cartridge tapes, records, compact discs, and record or tape cleaning equipment; art and graphics supplies; maintenance supplies, including replacement final and driver tubes normally considered in the industry as normal maintenance-budget-provided items and similar items.

(10) Backup Equipment. (a) Eligible: Hot standby or backup microwave for the main studio-to-transmitter link only; a backup or spare exciter for a television transmitter, as required by good engineering practice. (b) Ineligible: Redundant equipment, such as spare transmitters, or costs associated with them, as well as backup microwave equipment (except as noted above).

(11) Electric Power. (a) Eligible: Generally, all primary power costs from the output of the main power meter panel; regulators and surge protectors, as required by good engineering practice, to stabilize transmitter RF output. Where primary power is not available or is unusable for broadcast, then PTFP may provide funding for those devices needed to power the facility if the need for that equipment is fully documented in the application. (b) Ineligible: Costs of installing primary power to the facility, including transformers, power lines, gasoline or diesel powered generators, and related equipment.

(12) Test and Maintenance Equipment. (a) Eligible: Required test equipment, as indicated by good engineering practice for the maintenance of the project equipment. (b) Ineligible: Maintenance equipment such as hand and power tools, storage cabinets, and maintenance services.

(13) Air Conditioning and Ventilation. (a) Eligible: The costs to provide ventilation of eligible project equipment, such as ducting for transmitters and transmitter air conditioning, as required by good engineering practice. (b) Ineligible: Unless exceptionally well-documented, air conditioning for control rooms, or equipment rooms, studios, mobile units, and other operational rooms and offices.

(14) Remote Vans. (a) Eligible: Items to equip a remote van for audio/video production. (b) Ineligible: All vehicles.

B. Other Costs

(1) Construction Applications: NTIA generally will not fund salary expenses, including staff installation costs, and pre-application legal and engineering fees. Certain ''pre-operational expenses'' are eligible for funding. (See 15 CFR § 2301.2.) Despite this provision, NTIA regards its primary mandate to be funding the acquisition of equipment and only secondarily funding of salaries. A discussion of this issue appears in the PTFP Final Rules under the heading *Support for Salary Expenses* in the introductory section of the document.

(2) Planning Applications. (a) Eligible: Salaries are eligible expenses for all planning grant applications, but should be fully described and justified within the application. Planning grant applicants may lease office equipment, furniture and space, and may purchase expendable supplies under the terms of 47 U.S.C. § 392 (c). (b) Ineligible: Planning grant applications cannot include the cost of constructing or operating a telecommunications facility.

(3) Audit Costs. Audits shall be performed in accordance with audit requirements contained in Office of Management and Budget Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, revised June 30, 1997. OMB Circular A–133 requires that non-profit organizations, government agencies, Indian tribes and educational institutions expending more than $300,000 in federal funds during a one-year period conduct a single audit in accordance with guidelines outlined in the circular. Applicants are reminded that other audits may be conducted by the Office of Inspector General.

NTIA recognizes that most of its grant recipients are divisions of state and local governments or are public broadcasting facilities, all of which routinely conduct annual audits. In order to make the maximum amount of monies available for equipment purchases and planning activities, NTIA will therefore only fund audit costs in exceptional circumstances.

V. Notice of Applications Received

In accordance with 15 CFR § 2301.13, NTIA will publish a notice in the **Federal Register** listing all applications received by the Agency. Listing an application in such a notice merely acknowledges receipt of an application to compete for funding with other applications. Publication does not preclude subsequent return of the application for the reasons discussed under the Dates section above, or disapproval of the application, nor does it assure that the application will be funded. The notice will also include a request for comments on the applications from any interested party.

VI. Evaluation Process

See 15 CFR § 2301.16 for a description of the Technical Evaluation and 15 CFR § 2301.17 for the Evaluation Criteria.

VII. Selection Process

Based upon the above cited evaluation criteria, the PTFP program staff prepares summary recommendations for the PTFP Director. These recommendations incorporate outside reviewers rankings and recommendations, engineering assessments, and input from the National Advisory Panel, State Single Point of Contacts and state telecommunications agencies. Staff recommendations also consider project impact, the cost/benefit of a project and whether review panels have consistently applied the evaluation criteria. The PTFP Director will consider the summary recommendations prepared by program staff, will recommend the funding order of the applications, and will present recommendations to the OTIA (Office of Telecommunications and Information Applications) Associate Administrator for review and approval. The PTFP Director recommends the funding order for applications in three categories: ''Recommended for Funding,'' ''Recommended for Funding if Funds Available,'' and ''Not Recommended for Funding.'' See 15 CFR § 2301.18 for a description of the selection factors retained by the Director, OTIA Associate Administrator, and the Assistant Secretary for Telecommunications and Information.

Upon review and approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selection Official, the NTIA Administrator. The NTIA Administrator selects the applications for possible grant award taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes set forth at 15 CFR § 2301.1(a) and (c). Prior to award, applications may be negotiated between PTFP staff and the applicant to resolve whatever differences might exist between the

original request and what PTFP proposes to fund. Some applications may be dropped from the proposed slate due to lack of Federal Communications Commission licensing authority, an applicant's inability to make adequate assurances or certifications, or other reasons. Negotiation of an application does not ensure that a final award will be made. The PTFP Director recommends final selections to the NTIA Administrator applying the same factors as listed in 15 CFR § 2301.18. The Administrator then makes the final award selections taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes in 15 CFR § 2301.1 (a) and (c).

VIII. Project Period

Planning grant award periods customarily do not exceed one year, whereas construction grant award periods commonly range from one to two years. Although these time frames are generally applied to the award of all PTFP grants, variances in project periods may be based on specific circumstances of an individual proposal.

Authority: The Public Telecommunications Financing Act of 1978, as amended, 47 U.S.C. §§ 390–393, 397–399(b).

(Catalog of Federal Domestic Assistance No. 11.550)

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 98–29776 Filed 11–5–98; 8:45 am]

BILLING CODE 3510–60–P

Federal Register

Friday
November 6, 1998

Part VIII

The President

Executive Order 13105—Open Enrollment Season for Participants in the Foreign Service Retirement and Disability System and the Central Intelligence Agency Retirement and Disability System

Federal Register
Vol. 63, No. 215
Friday, November 6, 1998

Presidential Documents

Title 3—

The President

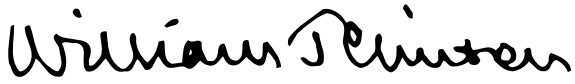
Executive Order 13105 of November 2, 1998

Open Enrollment Season for Participants in the Foreign Service Retirement and Disability System and the Central Intelligence Agency Retirement and Disability System

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 827 of the Foreign Service Act of 1980 (22 U.S.C. 4067) and section 292 of the Central Intelligence Agency Retirement Act of 1964 (50 U.S.C. 2141), and in order to conform further the Foreign Service Retirement and Disability System and the Central Intelligence Agency Retirement and Disability System to the Civil Service Retirement and Disability System, it is hereby ordered as follows:

Section 1. In conjunction with section 860 of the Foreign Service Act of 1980 (22 U.S.C. 4071i), the Secretary of State shall issue regulations providing for an open enrollment period from November 1, 1998, to April 30, 1999, during which employee participants in the Foreign Service Retirement and Disability System may elect to become subject to the Foreign Service Pension System.

Sec. 2. In conjunction with section 307(a) of the Central Intelligence Agency Retirement Act of 1964 (50 U.S.C. 2157(a)), the Director shall provide for an open enrollment period from November 1, 1998, to April 30, 1999, during which employee participants in the Central Intelligence Agency Retirement and Disability System may elect to become subject to the Federal Employees' Retirement System, comparable to the election for civil service employees provided for by the Federal Employees' Retirement System Open Enrollment Act of 1997, Public Law 105–61.



THE WHITE HOUSE,
November 2, 1998.

[FR Doc. 98–30054
Filed 11–5–98; 8:45 am]
Billing code 3195–01–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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S. 2246/P.L. 105–343
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S. 2413/P.L. 105–344
Prohibiting the conveyance of Woodland Lake Park tract in Apache-Sitgreaves National Forest in the State of Arizona unless the conveyance is made to the town of Pinetop-Lakeside or is authorized by Act of Congress. (Nov. 2, 1998; 112 Stat. 3204)

S. 2427/P.L. 105–345
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S. 2505/P.L. 105–346
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S.J. Res. 58/P.L. 105–349
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H.J. Res. 138/P.L. 105–350
Appointing the day for the convening of the first session of the One Hundred Sixth Congress. (Nov. 3, 1998; 112 Stat. 3218)

S. 538/P.L. 105–351
To authorize the Secretary of the Interior to convey certain facilities of the Minidoka project to the Burley Irrigation District, and for other purposes. (Nov. 3, 1998; 112 Stat. 3219)

S. 744/P.L. 105–352
Fall River Water Users District Rural Water System Act of 1998 (Nov. 3, 1998; 112 Stat. 3222)

S. 1260/P.L. 105–353
Securities Litigation Uniform Standards Act of 1998 (Nov. 3, 1998; 112 Stat. 3227)

S. 2524/P.L. 105–354
To codify without substantive change laws related to Patriotic and National Observances, Ceremonies, and Organizations and to improve the United States Code. (Nov. 3, 1998; 112 Stat. 3238)

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