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February 19, 1999

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WASHINGTON, DC

WHEN: February 23, 1999 at 9:00 am.

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(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–316–AD; Amendment 39–11041; AD 99–04–16]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes. This action requires a one-time operational test to detect discrepancies of the delay valves and check valves of the main landing gear (MLG); and corrective actions, if necessary. This amendment also requires replacement of the retraction bracket assemblies of the MLG with new or reworked retraction bracket assemblies. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent failure of the retraction bracket assemblies of the MLG, which could result in an undampened extension of the MLG, damage to the sidestay and attachment structure, and possible collapse of the MLG.

DATES: Effective March 8, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 8, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–316–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

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

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that, during the finishing process of the retraction brackets of the MLG, small particles of hot material may have been embedded into the surface of the retraction brackets, which may affect the fatigue life of a retraction bracket assembly. Subsequently, fretting was discovered on the surface of the bushing holes of the retraction brackets of the MLG, which also may affect the fatigue life of the retraction bracket assemblies. Failure of a retraction bracket assembly, if not corrected, could result in an undampened extension of the MLG, damage to the sidestay and attachment structure, and possible collapse of the MLG.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A330–32–3058, Revision 1 (for Model A330 series airplanes), and A340–32–4082, Revision 01 (for Model A340 series airplanes), both dated February 25, 1997. These service bulletins describe procedures for a one-time operational test to detect discrepancies of the delay valves and check valves of the main landing gear (MLG); and corrective actions, if necessary. The corrective actions involve replacing any discrepant delay valve or check valve with a new delay valve or check valve. A discrepant delay valve or check valve could indicate that the retraction bracket assembly has operated at a higher stress level, thereby lowering the fatigue life of the retraction bracket.

Airbus also has issued Service Bulletins A330–32–3066 (for Model A330 series airplanes), and A340–32–4092 (for Model A340 series airplanes), both dated November 18, 1996. These service bulletins describe procedures for replacing the left and right retraction bracket assemblies of the MLG with new or reworked retraction bracket assemblies.

Accomplishment of the actions specified in the service bulletins described previously is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 97–007–042(B)R2 (for Model A330 series airplanes), and 97–008–058(B)R1 (for Model A340 series airplanes), both dated April 9, 1997, in order to assure the continued airworthiness of these airplanes in France.

Airbus Service Bulletins A330–32–3066 and A340–32–4092 reference Messier-Dowty Service Bulletins A33/34–32–62, Revision 1, dated October 16, 1996, and A33/34–32–80, Revision 1, dated October 17, 1996 (for both Model A330 and A340 series airplanes), as additional sources of service information for replacing the left and right retraction bracket assemblies of the MLG with new or reworked retraction bracket assemblies.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of the retraction bracket assemblies of the MLG, which could result in an undampened extension of the MLG; damage to the sidestay and attachment structure, and possible collapse of the MLG. This AD requires accomplishment of the actions specified in the Airbus service bulletins described previously.

Cost Impact

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

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 6 work hours to accomplish the required operational test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the operational test required by this AD would be $360 per airplane.

It would require approximately 4 to 8 work hours to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement required by this AD would range from $240 to $480 per airplane.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–316–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–04–16 Airbus Industrie: Amendment 39–11041. Docket 97–NM–316–AD.

Applicability: Model A330 and A340 series airplanes having retraction bracket part numbers as listed in paragraph 1.A. (''Effectivity'') of Airbus Service Bulletin A330–32–3058, Revision 1 (for Model A330 series airplanes), or A340–32–4082, Revision 01 (for Model A340 series airplanes), both dated February 25, 1997; except those airplanes on which Airbus Service Bulletin A330–32–3066 (for Model A330 series airplanes) or A340–32–4092 (for Model A340 series airplanes), both dated November 18, 1996, has been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the retraction bracket assemblies of the main landing gear (MLG), which could result in an undampened extension of the MLG, damage to the sidestay and attachment structure, and possible collapse of the MLG, accomplish the following:

(a) Prior to the accumulation of 2,400 total landings, or within 200 landings after the effective date of this AD, whichever occurs later, perform a one-time operational test to detect discrepancies of the left and right delay valves and check valves of the MLG, in accordance with Airbus Service Bulletin

A330–32–3058, Revision 1 (for Model A330 series airplanes), or A340–32–4082, Revision 01 (for Model A340 series airplanes), both dated February 25, 1997. If any discrepancy is detected, prior to further flight, replace any discrepant delay valve or check valve with a new delay valve or check valve in accordance with the applicable service bulletin.

(b) Replace the left and right retraction bracket assemblies of the MLG with new or reworked retraction bracket assemblies in accordance with Airbus Service Bulletin A330–32–3066 (for Model A330 series airplanes), or A340–32–4092 (for Model A340 series airplanes), both dated November 18, 1996, at the time specified in paragraph (b)(1) or (b)(2), of this AD, as applicable.

(1) If no discrepancy is detected during the operational test required by paragraph (a) of this AD: Accomplish the replacement prior to the accumulation of 4,300 total landings, or within 200 landings after the effective date of this AD, whichever occurs later.

(2) If any discrepancy is detected during the operational test required by paragraph (a) of this AD: Accomplish the replacement prior to the accumulation of 3,250 total landings, or within 200 landings after the effective date of this AD, whichever occurs later.

Note 2: Airbus Service Bulletins A330–32–3066 and A340–32–4092 reference Messier-Dowty Service Bulletins A33/34–32–62, Revision 1, dated October 16, 1996, and A33/34–32–80, Revision 1, dated October 17, 1996 (for both Model A330 and A340 series airplanes), as additional sources of service information for replacing the left and right retraction bracket assemblies of the MLG with new or reworked retraction bracket assemblies.

(c) As of the effective date of this AD, no person shall install on any airplane a retraction bracket assembly having part number (P/N) 201428224, 201428225, 201428226, 201428227, 201428251, 201428252, 201428253, 201428254, 201478207, 201478208, 201478210, 201478211, 201478217, 201478218, 201478220, or 201478221.

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

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

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

(f) The actions shall be done in accordance with Airbus Service Bulletin A330–32–3066, dated November 18, 1996; Airbus Service Bulletin A340–32–4092, dated November 18, 1996; Airbus Service Bulletin A330–32–3058, Revision 1, dated February 25, 1997; or Airbus Service Bulletin A340–32–4082, Revision 01, dated February 25, 1997, which contains the following list of effective pages:

Page number shown on page	Revision level shown on page	Date shown on page
1–5	01	Feb. 25, 1997.
6–10	Original	Nov. 18, 1996.

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

Note 4: The subject of this AD is addressed in French airworthiness directives 97–007–042(B)R2 and 97–008–058(B)R1, both dated April 9, 1997.

(g) This amendment becomes effective on March 8, 1999.

Issued in Renton, Washington, on February 9, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–3732 Filed 2–18–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–236–AD; Amendment 39–11042; AD 99–04–17]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires inspections to detect discrepancies of the support straps of the flaps and adjacent areas, and corrective action, if necessary. This amendment also requires replacement of the support straps with new straps made of steel. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue cracking of the support straps of the flaps, which could result in further damage to the flap structure, and consequently lead to reduced controllability of the airplane.

DATES: Effective March 26, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 26, 1999.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on November 7, 1997 (62 FR 60191). That action proposed to require inspections to detect discrepancies of the support straps of the flaps and adjacent areas; corrective action, if necessary; and replacement of the support straps with new straps made of steel.

Actions Since Issuance of Proposal

Since the issuance of the proposal, Saab issued Service Bulletin 340–57–033, Revision 02, dated January 29, 1998. The inspection and modification procedures described in Revision 02 are substantially equivalent to those described in Revision 01 (which was cited in the proposal as the appropriate source of service information for accomplishment of the actions). The only change effected by Revision 02 is to clarify certain procedures. The final rule has been revised to require accomplishment of the actions in accordance with either Revision 01 or Revision 02 of the service bulletin.

Comments

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

Support for the Proposal

One commenter supports the proposal.

Requests To Accept or Include Manufacturer's Approved Repairs in Final Rule

One commenter, the manufacturer, requests that the proposal be revised to accept repairs based on approval by Saab, in lieu of approval by the FAA, in the event cracking is detected. The commenter notes that the LFV has authorized Saab to approve such repairs. Another commenter requests that the final rule be revised to specifically reference or incorporate repair instructions provided by the manufacturer. That commenter states that operators that are required to accomplish repairs will likely incur a sizable delay or cancellation while awaiting repair approval by the FAA.

The FAA does not concur. Specific repair instructions were not included in the referenced service bulletin, and have not been provided to the FAA by the manufacturer, so cannot be included in this AD. Additionally, despite the LFV's current authorization of repair approval by Saab, the FAA cannot delegate authority for general approval of repairs on the FAA's behalf to Saab, because the status of Saab's delegation by the LFV could change without notice. However, in light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreement with Sweden, the FAA has determined that, for this AD, a repair approved by either the FAA or the LFV (or its delegated agent) is acceptable for compliance with this AD. Paragraphs (a) and (b) of the final rule have been revised accordingly.

Request To Cite Earlier Version of Service Bulletin

One commenter requests that the proposed AD be revised to refer to the original version of Saab Service Bulletin 340–57–033, dated May 29, 1997. (Revision 01 of the service bulletin, dated August 18, 1997, was referred to in the proposed AD as the appropriate source of service information for accomplishment of the actions.) The commenter states that it already has accomplished certain actions in accordance with the original version of the service bulletin, and requests credit for this work.

The FAA concurs. The FAA has determined that the actions described in the original version and Revision 01 of the service bulletin are substantially equivalent. Therefore, a NOTE has been added to the final rule to refer to the original issue of the service bulletin as an acceptable means of compliance with this AD. (Operators should note that, as discussed previously, the final rule has been revised to additionally cite Revision 02 as an appropriate source of service information for compliance with this AD.)

Request To Revise Compliance Language

One commenter (the manufacturer) requests that the compliance language of the proposal be revised to be consistent with the intent of the service bulletin. The commenter requests that paragraph (a) of the proposal be revised to identify compliance in terms of flight cycles on each *flap*, rather than flight cycles on the *airplane*. In addition, the commenter requests that paragraph (b) of the proposal be revised to require accomplishment, for flaps that have accumulated 16,000 flight cycles, at a time ''not later than either at the next scheduled structural inspection of the flaps or within 3,000 flight cycles, whichever occurs later.'' By contrast, the proposal specified compliance in terms of ''the next scheduled structural inspection of the flaps, but not later than the accumulation of 3,000 flight cycles.''

The FAA partially concurs with the commenter's request to revise the compliance language of the proposed AD.

The FAA does not agree that the compliance should be specified in terms of flight cycles on the flaps. Because the FAA requires operators to document flight cycles on each airplane, but not on individual flap assemblies, operators may be unable to ascertain the exact number of flight cycles on an individual flap. The final rule will retain compliance in terms of flight cycles on the airplane.

The FAA agrees that the detailed visual inspection and replacement should be performed at the next scheduled flap inspection or within 3,000 flight cycles, whichever occurs *later*. However, the FAA finds it necessary to more precisely define the ''next scheduled flap inspection'' interval because some U.S. operators may follow different inspection schedules. Therefore, the FAA finds that this compliance time should be defined as ''Prior to the accumulation of 6,000 flight cycles after the last scheduled detailed visual inspection (if any) of the flaps accomplished prior to the effective date of this AD'' (which may have been accomplished in accordance with the Saab 340 Maintenance Review Board document). Additionally, the FAA concurs that the inspection specified by paragraph (b) of this AD is not required until the airplane has accumulated 16,000 total flight cycles. Paragraph (b) of the final rule has been reformatted and revised accordingly. A new paragraph (c) has been added to the final rule to specify the terminating action for paragraph (a) of this AD [which was specified previously in paragraph (b) of the original NPRM].

Additional Change to Proposal

The FAA has become aware that the inspection requirement in paragraph (b) of the proposed rule could be misinterpreted contrary to the FAA's intent. Paragraph (b) of the final rule has further been revised to clarify that the required inspection is a ''detailed *visual* inspection'' rather than simply a ''detailed inspection.''

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 252 Saab Model SAAB SF340A and SAAB 340B series airplanes of U.S. registry will be affected by this AD.

It will take approximately 30 work hours per airplane to accomplish the required visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the visual inspection required by this AD is estimated to be $1,800 per airplane.

It will take approximately 180 work hours per airplane to accomplish the required detailed visual inspection and concurrent replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $4,580 per airplane. Based on these figures, the cost impact on U.S. operators of the detailed visual inspection and replacement required by this AD is estimated to be $3,875,760, or $15,380 per airplane.

The cost impact figures discussed above are based on assumptions that no

operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–04–17 Saab Aircraft AB: Amendment 39–11042. Docket 97–NM–236–AD.

Applicability: Model SAAB SF340A and SAAB 340B series airplanes, as listed in Saab Service Bulletin 340–57–033, Revision 01, dated August 18, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the support straps of the flaps, which could result in further damage to the flap structure and reduced controllability of the airplane, accomplish the following:

Note 2: Accomplishment of the inspections and replacement specified by paragraphs (a) and (b) of this AD, in accordance with Saab Service Bulletin 340–57–033, dated May 29, 1997, is also considered acceptable for compliance with the requirements of those paragraphs.

(a) Except as provided by paragraph (b) of this AD: Prior to the accumulation of 16,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, perform a visual inspection to detect discrepancies (i.e., cracking and/or damage) of the support straps of the left- and right-hand flaps and adjacent areas, in accordance with Saab Service Bulletin 340–57–033, Revision 01, dated August 18, 1997; or Revision 02, dated January 29, 1998. If any discrepancy is detected, prior to further flight, repair it in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Luftfartsverket (LFV) (or its delegated agent).

(b) Perform a detailed visual inspection to detect discrepancies (i.e., cracking and/or damage) of the left- and right-hand flaps in the area adjacent to the support straps, and replace the support straps of the left- and right-hand flaps with new straps made of steel; at the latest of the times specified by paragraphs (b)(1), (b)(2), and (b)(3) of this AD; in accordance with Saab Service Bulletin 340–57–033, Revision 01, dated August 18, 1997, or Revision 02, dated January 29, 1998. If any discrepancy is detected during the detailed visual inspection, prior to further flight, repair it in accordance with a method approved by either the Manager, International Branch, ANM–116, or the LFV (or its delegated agent).

(1) Prior to the accumulation of 6,000 flight cycles after the last scheduled detailed visual inspection (if any) of the flaps accomplished prior to the effective date of this AD; or

(2) Within 3,000 flight cycles after the effective date of this AD; or

(3) Prior to the accumulation of 16,000 total flight cycles.

(c) Accomplishment of the inspection and replacement specified in paragraph (b) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD.

(d) As of the effective date of this AD, no person shall install a flap assembly having part number 7257800–501 through –508 inclusive, –571, –572, or –851 through –858 inclusive, on any airplane, unless that flap assembly has been modified in accordance with Saab Service Bulletin 340–57–033, Revision 01, dated August 18, 1997, or Revision 02, dated January 29, 1998.

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

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

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

(g) Except as provided by paragraphs (a) and (b) of this AD, the actions shall be done in accordance with Saab Service Bulletin 340–57–033, Revision 01, dated August 18, 1997, or Saab Service Bulletin 340–57–033, Revision 02, dated January 29, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–117, dated June 9, 1997.

(h) This amendment becomes effective on March 26, 1999.

Issued in Renton, Washington, on February 9, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–3728 Filed 2–18–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–320–AD; Amendment 39–11044; AD 99–04–19]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 777 series airplanes. This action requires repetitive detailed visual inspections to detect cracking of the cove skin on the outboard leading edge slats; a slat adjustment check; and corrective actions, if necessary. This amendment is prompted by reports of fatigue cracking and/or missing pieces of the cove skin on the outboard leading edge slats. The actions specified in this AD are intended to detect and correct such discrepancies, which could result in skin separation or structural damage to the leading edge slats, and consequent reduced controllability of the airplane.

DATES: Effective March 8, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 8, 1999.

Comments for inclusion in the Rules Docket must be received on or before April 20, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–320–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received several reports of fatigue cracking and/or missing pieces of the cove skin and on the outboard leading edge slats on the left and right wings on Boeing Model 777 series airplanes. On four airplanes that had accumulated between 3,000 and 14,000 flight hours and 650 and 2,800 flight cycles, cracking was located on slat numbers 4, 5, and 9. On one airplane that had accumulated 4,530 total flight hours and 685 total flight cycles, the cracked and missing pieces were located on slat numbers 5 and 10. On another airplane that had accumulated 1,140 total flight hours and 1,525 total flight cycles, a portion of the leading edge wedge was missing, and cracking in the cove skin at the deflection control ribs on slat number 5 was detected. At this time, the exact cause of the cracking is unknown. These conditions, if not detected and corrected, could result in skin separation or structural damage to the outboard leading edge slats, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–57A0034, Revision 2, dated November 19, 1998, which, among other things, describes procedures for repetitive detailed visual inspections to detect cracking of the cove skin on the outboard leading edge slats; a slat adjustment check to verify proper adjustment of the slat rigging; and corrective actions, if necessary. The corrective actions include stop drilling of any crack that is 1.5 inches or less as an interim action; replacement of the leading edge slat; and adjustment of the slat, if necessary. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct cracking and/or missing pieces of the cove skin on the outboard leading edge slats on the left and right wings, which could result in skin separation or structural damage to the leading edge slats, and consequent reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between This Rule and Alert Service Bulletin

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

The alert service bulletin also specifies that the inspection of the interior structure of the cove skin be accomplished repetitively. This AD does not require repetitive interior inspections of this area, because the FAA has determined that the repetitive detailed visual inspections of the exterior structure of the cove skin required by this AD are adequate to detect cracking in the subject area.

The flow chart in Figure 1. of the alert service bulletin does not accurately describe the mandatory corrective actions addressed in this rule. There have been recent instances involving cracking of the slats where it was determined that the slats were properly rigged, therefore, the FAA is uncertain of the cause for the cracking and is not relying on the rigging checks to assure crack free structure. The FAA has determined that the slat adjustment check cited in the flow chart does not adequately address the identified unsafe condition; therefore, this AD does not require accomplishment of this action at the intervals specified.

Interim Action

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

Determination of Rule's Effective Date

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be

considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–320–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–04–19 Boeing: Amendment 39–11044. Docket 98–NM–320–AD.

Applicability: All Model 777 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking and/or missing pieces of the cove skin on the outboard leading edge slats on the left and right wings, which could result in skin separation or structural damage to the leading edge slats, and consequent reduced controllability of the airplane, accomplish the following:

Note 2: Where there are differences between the alert service bulletin and the AD, the AD prevails.

(a) Prior to the accumulation of 500 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection to detect cracking of the cove skin on the outboard leading edge slats of the left and right wings at slat numbers 1 through 6 inclusive, and 9 through 14 inclusive; in accordance with Boeing Alert Service Bulletin 777–57A0034, Revision 2, dated November 19, 1998. Repeat the inspection thereafter at intervals not to exceed 350 flight cycles.

(b) If any cracking is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the actions specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 777–57A0034, Revision 2, dated November 19, 1998.

(1) For any crack that is less than or equal to 1.5 inches in length, stop drill the crack. Within 5 days following accomplishment of the stop drilling accomplish paragraphs (b)(1)(i) and (b)(1)(ii) of this AD.

(i) Perform a detailed visual inspection of the interior structure of the cove skin at slat numbers 1 through 6 inclusive, and 9 through 14 inclusive, in accordance with Part 2 of the Accomplishment Instructions of the alert service bulletin.

(A) If no crack is detected, prior to further flight, accomplish a slat adjustment check, and if any slat is not adjusted within the limits, adjust the slat to within the limits; in accordance with Part 3 of the Accomplishment Instructions of the alert service bulletin.

(B) If any crack is detected, prior to further flight, replace the slat with a new slat, and accomplish a slat adjustment in accordance with Part 2 of the Accomplishment Instructions of the alert service bulletin.

(ii) Repair any cracked cove skin in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) For any crack that is greater than 1.5 inches in length, prior to further flight, accomplish paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Perform the inspection required by paragraph (b)(1)(i) of this AD in accordance with Part 2 of the Accomplishment Instructions of the alert service bulletin.

(A) If no crack is detected, prior to further flight, accomplish a slat adjustment check, and if any slat is not adjusted within the limits, adjust the slat to within the limits; in accordance with Part 3 of the Accomplishment Instructions of the alert service bulletin.

(B) If any crack is detected, prior to further flight, replace the slat with a new slat and accomplish a slat adjustment in accordance with Part 2 of the Accomplishment Instructions of the alert service bulletin.

(ii) Repair any cracked cove skin in accordance with a method approved by the Manager, Seattle ACO.

(3) Replace the slat with a new slat and accomplish a slat adjustment in accordance with Part 2 of the Accomplishment Instructions of the alert service bulletin.

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

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

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

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 777–

57A0034, Revision 2, dated November 19, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 8, 1999.

Issued in Renton, Washington, on February 9, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–3726 Filed 2–18–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–301–AD; Amendment 39–11043; AD 99–04–18]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300–600 series airplanes, that requires removal of the fuel level sensing amplifier (FLSA) of the trim tank system, modification of the polarization pin code in the electronics bay, and installation of a new, improved FLSA. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent continuous aft transfer of fuel due to the FLSA not supplying electrical power to the trim tank overflow sensor, which could result in potential loss of fuel during flight.

DATES: Effective March 26, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 26, 1999.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 series airplanes was published in the **Federal Register** on December 18, 1998 (63 FR 70068). That action proposed to require removal of the fuel level sensing amplifier (FLSA) of the trim tank system, modification of the polarization pin code in the electronics bay, and installation of a new, improved FLSA.

Comments

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

The commenter indicates that it has completed the subject modifications in accordance with French airworthiness directive 98–249–252(B).

Conclusion

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

Cost Impact

The FAA estimates that 61 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $10,980, or $180 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–04–18 Airbus Industrie: Amendment 39–11043. Docket 98–NM–301–AD.

Applicability: Model A300–600 series airplanes on which Airbus Modification 4801 was accomplished during production and on which Airbus Modification 10778 (reference Airbus Service Bulletin A300–31–6051, dated June 28, 1996) has been accomplished; except those airplanes on which Airbus Modification 11683 (reference Airbus Service Bulletin A300–28–6055, dated January 28, 1997, and Revision 01, dated July 24, 1998) has been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent continuous aft transfer of fuel due to the fuel level sensing amplifier (FLSA) not supplying electrical power to the trim tank overflow sensor, which could result in potential loss of fuel during flight, accomplish the following:

(a) Except as provided by paragraph (b) of this AD, within 2 months after the effective date of this AD, remove the FLSA of the trim tank system, modify the polarization pin code in the electronics bay, and install a new, improved FLSA, in accordance with Airbus Service Bulletin A300–28–6055, Revision 01, dated July 24, 1998.

Note 2: Accomplishment of the actions specified in paragraph (a) of this AD, prior to the effective date of this AD, in accordance with Airbus Service Bulletin A300–28–6055 dated January 28, 1997, is considered acceptable for compliance with the applicable actions specified in this AD.

(b) For airplanes on which Airbus Service Bulletin A300–31–6051, dated June 28, 1996, is accomplished after the effective date of this AD: Concurrent with the accomplishment of Airbus Service Bulletin A300–31–6051, accomplish the actions required by paragraph (a) of this AD, in accordance with Airbus Service Bulletin A300–28–6055, Revision 01, dated July 24, 1998.

(c) As of the effective date of this AD, no person shall install a FLSA having part number 722–295–2, on any airplane.

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

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

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

(f) The actions shall be done in accordance with Airbus Service Bulletin A300–28–6055, Revision 01, dated July 24, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–249–252(B), dated July 1, 1998.

(g) This amendment becomes effective on March 26, 1999.

Issued in Renton, Washington, on February 9, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–3725 Filed 2–18–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–14; Amendment 39–11017; AD 99–03–03]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company Model AE 3007A and AE 3007A1/1 Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 99–03–03 applicable to Allison Engine Company Model AE 3007A turbofan engines that was published in the **Federal Register** on January 29, 1999 (64 FR 4525). A full authority digital electronic control (FADEC) assembly part number (P/N) in the compliance section is incorrect. This document corrects that P/N. In all other respects, the original document remains the same.

EFFECTIVE DATE: February 19, 1999.

FOR FURTHER INFORMATION CONTACT: Kyri Zaroyiannis, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7836, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to Allison Engine Company Model AE 3007A and AE 3007A1/1 turbofan engines, was published in the **Federal Register** on January 29, 1999 (64 FR 4525). The following correction is needed:

§ 39.13 [Corrected]

On page 4526, in the third column, in the Compliance Section, in paragraph (c), in the sixth line, ''2306867'' is corrected to read ''23068670''.

Issued in Burlington, MA, on February 8, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–4017 Filed 2–18–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–83; Amendment 39–11023; AD 99–03–09]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company, Inc. AE 2100A, AE 2100C, and AE 2100D3 Series Turboprop Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 99–03–09 applicable to Allison Engine Company Model AE 3007A turboprop engines that was published in the **Federal Register** on February 4, 1999 (64 FR 5592). The contact office address was omitted. This document corrects that omission. In all other respects, the original document remains the same.

EFFECTIVE DATE: February 19, 1999.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–8180, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to Allison Engine Company Model AE 2100A, AE 2100C, and AE 2100D3 turboprop engines, was published in the **Federal Register** on February 4, 1999 (64 FR 5592). The following correction is needed:

§ 39.13 [Corrected]

On page 5592, in the second column in the paragraph entitled **FOR FURTHER INFORMATION CONTACT:**, in the fourth line, ''Office Address'' is corrected to read ''2300 East Devon Avenue, Des Plaines, IL 60018.''

Issued in Burlington, MA, on February 8, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–4016 Filed 2–18–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–45]

Amendment to Class E Airspace; Selinsgrove, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Selinsgrove, PA. The development of a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) and the amendment of the VHF Omnidirectional Radio Range (VOR) or GPS–A SIAP at Penn Valley Airport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations by aircraft executing the GPS RWY 17 SIAP and VOR or GPS–A SIAP to Penn Valley Airport.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On December 24, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Selinsgrove, PA, was published in the **Federal Register** (63 FR 71234). The development of the GPS RWY 17 SIAP and amendment of the VOR or GPS–A SIAP for Penn Valley Airport requires the amendment of the Class E airspace at Selinsgrove, PA. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at Selinsgrove, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 17 SIAP and VOR or GPS–A SIAP to Penn Valley Airport.

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. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

AEA PA E5 Selinsgrove, PA [Revised]

Penn Valley Airport, Selinsgrove, PA
(Lat. 40°49′14″N., long. 76°51′50″W.)
Selinsgrove, VORTAC
(Lat. 40°47′27″N., long. 76°53′03″W.)

That airspace extending upward from 700 feet above the surface within a 8-mile radius of Penn Valley Airport and within 4 miles northwest and 5 miles southeast of the Selinsgrove VORTAC 207° radial, extending from the 8-mile radius 10 miles southwest of the VORTAC, excluding the portion that coincides with the Shamokin, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York on February 3, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–4171 Filed 2–18–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29467; Amdt. No. 414]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of

the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

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. Okahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment 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 95

Airspace, Navigation (air).

Issued in Washington, DC on February 19, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, March 25, 1999.

1. The authority citation for part 95 continues to read as follows:

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

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGE OVER POINTS

[Amendment 414 Effective Date, March 25, 1999]

From	To	Mea
§ 95.1001 Atlantic Routes A301 is Amended to Read in Part		
Bimini, BS VORTAC	Skips, BS FIX	4000
Skips, BS FIX	Fowee, FL FIX	5000
Fowee, FL FIX	Zolla, OA FIX	10000
Zolla, OA FIX	Ursus, OA FIX	10000
Ursus, OA FIX	Ciego DE AVILA, CU VOR/DME	10000
A315 is Amended to Read in Part		
Bimini, BA VORTAC	Swimm, BA FIX	5000
Swimm, BA FIX	Tinky, BA FIX*	8000
*8000—MRA		
Tinky, BA FIX	Pluma, BS FIX*	12500
*12500—MRA		
Pluma, BA FIX	Jayee, BA FIX*	14000
*14000—MRA		
Jayee, BA FIX	Hodgy, BA FIX	6000
A509 is Amended to Read in Part		
Dolphin, FL VORTAC	Eonns, FL FIX	3000
Eonns, FL FIX	Ellee, FL FIX	5000
Ellee, FL FIX	Ursus, OA FIX	16000

From	To	MEA	MAA
B646 is Amended to Read in Part			
Marathon, FL NDB	Avion, FL FIX	*6000	45000
*1400—MOCA			
Avion, FL FIX	Ellee, FL FIX	*6000	45000

From	To	MEA	MAA
*1400—MOCA			
Ellee, FL FIX	Fowee, FL FIX**	*6000	45000
*1400—MOCA			
Fowee, FL FIX**	Nassau, BA NDB	*6000	45000
*1400—MOCA			
**Change Over Point: Fowee FIX (DOG LEG)			

From	To	MEA
B760 is Amended by Adding		
Bimini, BS VORTAC	Leevi, BS FIX	4000
Leevi, BS FIX	Mendl, BS FIX	8000
Mendl, BS FIX	Bordo, BS FIX	12000
Bordo, BS FIX	Nuevas, CU VOR/DME	12000
R628 is Amended to Read in Part		
Nassau, BS NDB	Pluma, BS FIX	6000
Pluma, BS FIX	Mendl, BS FIX	8000
Mendl, BS FIX	Zolla, OA FIX	10000
Zolla, OA FIX	Tania, OA FIX	12000
Tania, OA FIX	Varadero, CU NDB	12000
G437 is Amended to Read in Part		
Bimini, BS VORTAC	Jayee, BS FIX	5000
Jayee, BS FIX	Dinah, OA FIX	6000
Dinah, OA FIX	Ciego de Avila, CU VOR/DME	14000
§ 95.1001 Bahama Routes BR49V is Amended to Read in Part		
Nassau, BS VOR/DME	Nicko, BS FIX	4000
Nicko, BS FIX	Tinky, BS FIX	5000
Tinky, BS FIX	Fowee, BS FIX	12000
Fowee, BS FIX	Junur, FL FIX	6000
BR53V is Amended to Read in Part		
Virginia Key FL VOR/DME	Skips, BS FIX	4000
Skips, BS FIX	Leevi, BS FIX	5000
Leevi, BS FIX	Swimm, BS FIX	5000
§ 95.6012 VOR Federal Airway 12 is Amended to Read in Part		
Worke, IL FIX	Ozmoe, IN FIX	*6000
*2600—MOCA		
Tucumcari, NM VORTAC	Panhandle, TX VORTAC	6000
Panhandle, TX VORTAC	Gage, OK VORTAC	*5500
*4800—MOCA		
§ 95.6081 VOR Federal Airway 81 is Amended to Read in Part		
Plainview, TX VOR/DME	#Yocan, TX FIX	*5400
*4900—MOCA		
#6500—MRA		
Yocan, TX FIX	Panhandle, TX VORTAC	5400
Panhandle, TX VORTAC	Lantt, TX FIX	6000
Lantt, TX FIX	Exell, TX FIX	5400
Exell, TX FIX	Dalhart, TX VORTAC	5900
§ 95.6114 VOR Federal Airway 114 is Amended to Read in Part		
Childress, TX VORTAC	#Dogin, TX FIX	*5000
*4500—MOCA		
#6500—MRA		
Dogin, TX FIX	Caude, TX FIX	5000
Caude, TX FIX	Panhandle, TX VORTAC	5400
§ 95.6133 VOR Federal Airway 133 is Amended to Read in Part		
Stove, VA FIX	Kenya, WV FIX	*7000
*6200—MOCA		
Kenya, WV FIX	Charleston, WV VORTAC	*7000

From	To	MEA
*5000—MOCA Charleston, WV VORTAC	Zanesville, OH VOR/DME	3000
§ 95.6140 VOR Federal Airway 140 is Amended by Deleting		
Amarillo, TX VORTAC	Sayre, OK VORTAC	5000
§ 95.6140 VOR Federal Airway 140 is Amended by Adding		
Panhandle, TX VORTAC	Sayre, OK VORTAC	5000
§ 95.6198 VOR Federal Airway 198 is Amended to Read in Part		
San Antonio, TX VORTAC Seeds, TX FIX	Seeds, TX FIX Wemar, TX FIX	2900 2500
§ 95.6212 VOR Federal Airway 212 is Amended to Read in Part		
San Antonio, TX VORTAC Seeds, TX FIX	Seeds, TX FIX Wemar, TX FIX	2900 2500
§ 95.6272 VOR Federal Airway 272 is Amended to Read in Part		
Brisc, TX FIX	Sayre, OK VORTAC	4700
§ 95.6280 VOR Federal Airway 280 is Amended to Read in Part		
Texico, TX VORTAC Panhandle, TX VORTAC *4800—MOCA	Panhandle, TX VORTAC Gage, TX VORTAC	5900 *5500
§ 95.6282 VOR Federal Airway 282 is Amended to Read in Part		
Saranac Lake, NY VOR/DME *5000—MCA Fawns, FIX S BND #FIX Overlies U.S. Canadian Border	*#Fawns, NY FIX	5000
§ 95.6304 VOR Federal Airway 304 is Amended by Deleting		
Amarillo, TX VORTAC	Borger, TX VORTAC	5000
§ 95.6304 VOR Federal Airway 304 is Amended by Adding		
Panhandle, TX VORTAC	Borger, TX VORTAC	5000
§ 95.6402 VOR Federal Airway 402 is Amended to Read in Part		
Tucumcari, NM VORTAC *5400—MOCA	Moser, TX FIX	*6000
Moser, TX FIX *5200—MOCA	Sider, TX FIX	*6000
Sider, TX FIX *5200—MOCA	Panhandle, TX VORTAC	*5700
Panhandle, TX VORTAC *4700—MOCA #7000—MRA	#Brisc, TX VORTAC	*7000
Brisc, TX VORTAC *4400—MOCA	Gage, OK VORTAC	*5000
§ 95.6440 VOR Federal Airway 440 is Amended by Deleting		
Amarillo, TX VORTAC Brisc, TX FIX *4200—MOCA	Brisc, TX FIX Sayre, OK VORTAC	5300 *5300
§ 95.6440 VOR Federal Airway 440 is Amended by Adding		
Panhandle, TX VORTAC *4700—MOCA #7000—MRA	#Brisc, TX FIX	*7000
Brisc, TX FIX	Sayre, OK VORTAC	4700
§ 95.6556 VOR Federal Airway 556 is Amended to Read in Part		
Seeds, TX FIX	Wemar, TX FIX	2500

From	To	MEA	MAA
§ 95.7006 Jet Route 6 is Amended to Read in Part			
Tucumcari, NM VORTAC	Panhandle, TX VORTAC	18000	45000
Panhandle, TX VORTAC	Will Rogers, OK VORTAC	18000	45000
§ 95.7014 Jet Route 14 is Amended by Deleting			
Amarillo, TX VORTAC	Will Rogers, OK VORTAC	18000	45000
§ 95.7014 Jet Route 14 is Amended by Adding			
Panhandle, TX VORTAC	Will Rogers, OK VORTAC	18000	45000
§ 95.7017 Jet Route 17 is Amended to Read in Part			
Abilene, TX VORTAC	Panhandle, TX VORTAC	18000	45000
Panhandle, TX VORTAC	Tobe, CO VORTAC	18000	45000
§ 95.7026 Jet Route 26 is Amended to Read in Part			
Chisum, NM VORTAC	Panhandle, TX VORTAC	18000	45000
Panhandle, TX VORTAC	Gage, OK VORTAC	18000	45000
§ 95.7058 Jet Route 58 is Amended to Read in Part			
Las Vegas, NM VORTAC	Panhandle, TX VORTAC	18000	45000
Panhandle, TX VORTAC	Wichita Falls, TX VORTAC	18000	45000
§ 95.7078 Jet Route 78 is Amended to Read in Part			
Tucumcari, NM VORTAC	Panhandle, TX VORTAC	18000	45000
Panhandle, TX VORTAC	Will Rogers, OK VORTAC	18000	45000
§ 95.7522 Jet Route 522 is Amended to Read in Part			
U.S. Canadian Border	Rochester, NY VORTAC	18000	45000
Rochester, NY VORTAC	Hancock, NY VOR/DME	18000	45000
Hancock, NY VOR/DME	Kingston, NY VOR/DME	18000	45000
Airway segment from	To	Distance	Changeover points from
§ 95.8003 VOR Federal Airway Changeover Points V–12 is Amended by Deleting			
Tucumcari, NM VORTAC	Amarillo, TX VORTAC	45	Tucumcari
Amarillo, TX VORTAC	Gage, OK VORTAC	42	Amarillo
V–81 is Amended by Deleting			
Amarillo, TX VORTAC	Dalhart, TX VORTAC	36	Amarillo
V–133 is Amended by Adding			
Barrets Mountain, NC VOR/DME	Charleston, WV VORTAC	77	Barretts Mountain
V–140 is Amended by Adding			
Panhandle, TX VORTAC	Sayre, OK VORTAC	60	Sayre
V–280 is Amended by Deleting			
Amarillo, TX VORTAC	Gage, OK VORTAC	42	Amarillo
V–282 is Amended by Adding			
Saranac Lake, NY VOR/DME	Montreal, Canada VOR/DME	37	Saranac Lake
§ 95.8005 Jet Routes Changeover Points J–522 is Amended by Adding			
Rochester, NY VORTAC	Hancock, NY VOR/DME	54	Rochester
Hancock, NY VOR/DME	Kingston, NY VOR/DME	41	Hancock

[FR Doc. 99–4169 Filed 2–18–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81–19–000]

Project Cost and Annual Limits

Issued February 11, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(e)(1), the Director of the Office of Pipeline Regulation computes and publishes the project cost and annual limits specified in Table I of § 157.208(d) and Table II of § 157.215(a) for each calendar year.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION, CONTACT: Michael J. McGehee, Division of Pipeline Certificates, OPR, (202) 208–2257.

SUPPLEMENTARY INFORMATION:

United States of America

Federal Energy Regulatory Commission

Publication of Project Cost Limits Under Blanket Certificates

Docket No. RM81–19–000

Order of the Director, OPR

Issued February 11, 1999.

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the ''limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GNP implicit price deflator' published by the Department of Commerce for the previous calendar year.''

Pursuant to § 375.307(e)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Pipeline Regulation. The cost limits for calendar year 1998, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

Note that these inflation adjustments are based on the Gross Domestic Product (GDP) Implicit Price Deflator, rather than the Gross National Product (GNP) Implicit Price Deflator which is not yet available for 1998. The Commerce Department advises that in recent years the annual change has been virtually the same for both indices. Further adjustments will be made, if necessary.

List of subjects in 18 CFR Part 157

Natural Gas.

Marilyn L. Rand,

Director, Division of Pipeline Certificates, Office of Pipeline Regulation.

Accordingly, 18 CFR Part 157 is amended as follows:

PART 157—[AMENDED]

1. The authority citation for Part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

§ 157.208 [Amended]

2. Table I in § 157.208(d) is revised to read as follows:

TABLE I

Year	Limit	
	Auto. proj. cost limit (col. 1)	Prior notice proj. cost limit (col. 2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000
1988	5,400,000	15,100,000
1989	5,600,000	15,600,000
1990	5,800,000	16,000,000
1991	6,000,000	16,700,000
1992	6,200,000	17,300,000
1993	6,400,000	17,700,000
1994	6,600,000	18,100,000
1995	6,700,000	18,400,000
1996	6,900,000	18,800,000
1997	7,000,000	19,200,000
1998	7,100,000	19,600,000
1999	7,200,000	19,800,000

§ 157.215 [Amended]

3. Table II in § 157.215(a) is revised to read as follows:

TABLE II

Year	Limit
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000
1988	3,400,000
1989	3,500,000
1990	3,600,000
1991	3,800,000
1992	3,900,000
1993	4,000,000
1994	4,100,000
1995	4,200,000
1996	4,300,000
1997	4,400,000
1998	4,500,000
1999	4,550,000

[FR Doc. 99–4202 Filed 2–18–99; 8:45 am]
BILLING CODE 6717–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

22 CFR Parts 706, 713

RIN 3420–AA02

Production of Nonpublic Records and Testimony of OPIC Employees in Legal Proceedings

AGENCY: Overseas Private Investment Corporation.

ACTION: Final rule.

SUMMARY: This final rule establishes rules regarding subpoenas seeking nonpublic records or the testimony of current or former OPIC employees in legal proceedings. The final rule facilitates access to records in OPIC's custody by centralizing agency decision-making with respect to demands for records or testimony in such legal proceedings. The final rule provides procedures, requirements and information on how OPIC will handle these matters, and expressly prohibits any disclosure or testimony except as provided by the rule. The effect of this final rule will be, among other benefits, to ensure an efficient use of OPIC resources, promote uniformity in decisions, protect confidential information, maintain agency control over the release of official information, protect the interests of the United States, and provide guidance to parties. The final rule also amends the current rule regarding release of OPIC records which are exempt from disclosure under the Freedom of Information Act (FOIA), to conform with the procedures provided in this final rule.

DATES: Effective March 22, 1999.

FOR FURTHER INFORMATION CONTACT: Mitchel Neurock, Counsel for

Administrative Affairs, at (202) 336–8400.

SUPPLEMENTARY INFORMATION: This final rule implements, with minor technical changes, the proposed rule published on December 10, 1998. 63 FR 68213. More than 60 government agencies and departments have promulgated regulations governing the circumstances and manner in which an employee may respond to demands for testimony or production of documents. These regulations, issued under the authority of 5 U.S.C. 301, the so-called ''housekeeping statute,'' are separate from FOIA regulations. In addition, OPIC has statutory authority to ''take such actions as may be necessary or appropriate to carry out the powers'' granted it by Congress. 22 U.S.C. 2199(d).

The housekeeping statute expressly states that it does not provide a basis for withholding information or limiting the availability of records, but authorizes a head of an executive agency to issue ''regulations for the government of his department, the conduct of its employees, the distribution and performance of its business and the custody, use and preservation of its records, papers, and property.'' 5 U.S.C. 301. These regulations are known as ''Touhy regulations,'' thanks to a landmark Supreme Court decision, *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

OPIC receives subpoenas and requests for OPIC employees to provide evidence in legal proceedings. Typically, subpoenas are for OPIC records which are not available to the public under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Also, OPIC receives subpoenas and requests for OPIC employees to appear as witnesses in legal proceedings in conjunction with requests for nonpublic records or to provide testimony.

In recent years, the number of requests has averaged 3 to 4 per year. Often, these subpoenas and requests relate to litigation involving projects financed and/or insured in whole or in part by OPIC, where one or more parties want to use nonpublic records, such as OPIC financing documents, in the case. In addition, parties to litigation frequently wish to have an OPIC employee, often a finance or insurance officer, testify to establish the authenticity of the records or to explain the information contained in those records. If OPIC provides these records and an OPIC employee appears as a witness, this will cause a significant disruption in the employee's work schedule. Moreover, instead of producing a witness to testify as to the authenticity of documents, OPIC could provide documents under its corporate seal, the authenticity of which must be judicially noted. *See* 22 U.S.C. 2199(d).

Additionally, in many cases parties wish to use an OPIC employee as an expert witness on matters such as the fundamentals of project finance or other issues involving opinion evidence. OPIC's experience has been that, in practically all cases, the parties can address these issues by eliciting the testimony of other witnesses, including the testimony of their own independent expert witnesses. They may also use their own records.

OPIC's prior regulations failed to inform parties about any matter concerning submission of subpoenas. There was no guidance for parties seeking to submit subpoenas addressing when parties should submit a request for nonpublic documents or testimony, the time period for OPIC's review of such a request, potential fees, or, if a request is granted, any restrictions which OPIC might place upon the disclosure of records or the appearance of an OPIC employee as a witness. There was also no guidance for parties about the factors OPIC will consider in making its determination in response to such requests.

This final rule fills in these gaps in OPIC's regulations. The final rule, in brief: prohibits disclosure of nonpublic records or testimony by OPIC employees, as defined, absent compliance with the rule; lets the public know what information to submit and what factors OPIC will consider; and sets out filing fees, deadlines and potential restrictions on disclosure of nonpublic documents and testimony of OPIC employees. The charges for witnesses are the same as those provided by the federal courts, and the fees relating to the production of records are the same as those charged under FOIA.

A few simple definitions clarify that this final rule applies to a broad range of cases (not just matters before courts). The final rule applies to former as well as to current OPIC employees. Former OPIC employees remain prohibited from testifying about specific matters for which they had responsibility during their OPIC employment, unless permitted to testify as provided in this final rule. They are not, however, barred from appearing on general matters or otherwise employing their expertise (as expert witnesses, for example).

This final rule solves some problems which have arisen in the past. It should eliminate or reduce eleventh hour requests for nonpublic documents or testimony of OPIC employees. The procedures and criteria will ensure a more efficient use of OPIC resources, will minimize the possibility of involving OPIC in issues unrelated to its responsibilities, will promote uniformity in responding to such requests and subpoenas, and will maintain the necessary impartiality of OPIC in matters between private litigants. The final rule will serve OPIC's interest in protecting sensitive, confidential and privileged information and records generated by its work.

This final rule is procedural, not substantive. It does not confer a benefit upon anyone. It does not create a right to obtain OPIC records or the testimony of any OPIC employee, past or present, nor does it create any additional right or privilege not already available to OPIC to deny such a request. OPIC makes no waiver of its sovereign immunity by implementing this rule. Failure to comply with the rule, however, constitutes grounds for OPIC's denial of any request. Requesters may be able to seek judicial review of any final determination by OPIC under the Administrative Procedure Act, 5 U.S.C. 702.

This final rule is not intended to restrict access to records under FOIA, the Privacy Act (5 U.S.C. 552a), or any other authority. At the same time, nothing in this final rule would permit disclosure of information by OPIC or its employees except as provided by statute or other applicable law.

During the comment period provided by the notice of proposed rulemaking, OPIC received no formal comments.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires OPIC to prepare an analysis to describe any significant economic impact any proposed regulation may have on any small business or other small entity. 5 U.S.C. 602, 603. OPIC has determined and certifies that this final rule, if adopted, will not have a significant economic impact on any entity. The reasons for this determination are that the copying and witness fees to be charged to persons and entities submitting requests under the regulation are not large, and will not create a financial burden. The final rule will not create any significant demand for legal, accounting or consulting expenditures. Accordingly, OPIC has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

OPIC has determined that this rulemaking is not subject to the Paperwork Reduction Act, because OPIC averages fewer than 10 requests per year, and expects this level of activity to remain below this threshold. 5 CFR 1320.3(c).

Executive Order 12612

OPIC has determined that this final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.

List of Subjects

22 CFR Part 706

Freedom of information.

22 CFR Part 713

Administrative practice and procedure, Confidential business information, Freedom of Information Act, Government employees, Reporting and recordkeeping requirements, Subpoenas.

For the reasons set forth in the preamble, 22 CFR Chapter VII is amended as follows:

PART 706—[AMENDED]

1. The authority citation for Part 706 is revised to read as follows:

Authority: The Freedom of Information Act, as amended, 5 U.S.C. 552; 5 U.S.C. 301; 22 U.S.C. 2199(d).

2. In § 706.22, designate the introductory text as paragraph (a) and redesignate the previous paragraphs (a) through (f) as paragraphs (a)(1) through (a)(6). Add paragraph (b) to read as follows:

§ 706.22 Information and records not generally available to the public.

* * * * *

(b) *Prohibition against disclosure.* Except as provided in Part 713 of this Chapter or by other law or regulation, no officer, employee or agent of OPIC shall disclose or permit the disclosure of any exempt records of OPIC or of any information described in paragraph (a) of this section to any person other than those OPIC officers, employees or agents properly entitled to such information for the performance of their official duties.

3. Part 713 is added to read as follows:

PART 713—PRODUCTION OF NONPUBLIC RECORDS AND TESTIMONY OF OPIC EMPLOYEES IN LEGAL PROCEEDINGS

Sec.

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 702; 18 U.S.C. 207; 18 U.S.C. 641; 22 U.S.C. 2199(d); 28 U.S.C. 1821.

§ 713.1 What does this part prohibit?

This part prohibits the release of nonpublic records for legal proceedings or the appearance of an OPIC employee to testify in legal proceedings except as provided in this part. Any person possessing nonpublic records may release them or permit their disclosure or release only as provided in this part.

(a) *Duty of OPIC employees.*

(1) If you are an OPIC employee and you are served with a subpoena requiring you to appear as a witness or to produce records, you must promptly notify the Vice-president/General Counsel in the Department of Legal Affairs. The Vice-President/General Counsel has the authority to instruct OPIC employees to refuse to appear as a witness or to withhold nonpublic records. The Vice-President/General Counsel may let an OPIC employee provide testimony, including expert or opinion testimony, if the Vice-President/General Counsel determines that the need for the testimony clearly outweighs contrary considerations.

(2) If a court or other appropriate authority orders or demands from you expert or opinion testimony or testimony beyond authorized subjects contrary to the Vice-President/General Counsel's instructions, you must immediately notify the Vice-President/General Counsel of the order and then respectfully decline to comply with the order. You must decline to answer questions on the grounds that this part forbids such disclosure. You should produce a copy of this part, request an opportunity to consult with the Vice-President/General Counsel, and explain that providing such testimony without approval may expose you to disciplinary or other adverse action.

(b) *Duty of persons who are not OPIC employees.*

(1) If you are not an OPIC employee but have custody of nonpublic records, as defined at § 713.10, and you are served with a subpoena requiring you to produce records or to testify as a witness, you must promptly notify OPIC of the subpoena. Also, you must notify the issuing court or authority and the person or entity for whom the subpoena was issued of the contents of this part. Provide notice to OPIC by sending a copy of the subpoena to the Vice-President/General Counsel, OPIC, 1100 New York Avenue, NW, Washington, DC 20527. After reviewing notice, OPIC may advise the issuing court or authority and the person or entity for whom the subpoena was issued that this part applies and, in addition, may intervene, attempt to have the subpoena quashed or withdrawn, or register appropriate objections.

(2) After you notify the Vice-President/General Counsel of the subpoena, respond to the subpoena by appearing at the time and place stated in the subpoena, unless otherwise directed by the Vice President/General Counsel. Unless otherwise authorized by the Vice-President/General Counsel, decline to produce any records or give any testimony, basing your refusal on this part. If the issuing court or authority orders the disclosure of records or orders you to testify, decline to produce records or testify and advise the Vice-President/General Counsel.

(c) *Penalties.* Anyone who discloses nonpublic records or gives testimony related to those records, except as expressly authorized by OPIC or as ordered by a federal court after OPIC has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Also, former OPIC employees, in addition to the prohibition contained in this part, are subject to the restrictions and penalties of 18 U.S.C. 207.

§ 713.2 When does this part apply?

This part applies if you want to obtain nonpublic records or testimony of an OPIC employee for a legal proceeding. It does not apply to records that OPIC is required to release, or of which OPIC makes discretionary release, under the Freedom of Information Act (FOIA), records that OPIC releases to federal or state investigatory agencies, records that OPIC is required to release pursuant to the Privacy Act, 5 U.S.C. 552a, or records that OPIC releases under any other applicable authority.

§ 713.3 How do I request nonpublic records or testimony?

To request nonpublic records or the testimony of an OPIC employee, you must submit a written request to the Vice-President/General Counsel of OPIC. If you serve a subpoena on OPIC or an OPIC employee before submitting a written request and receiving a final determination, OPIC will oppose the subpoena on the grounds that you failed to follow the requirements of this part. You may serve a subpoena as long as it is accompanied by a written request that complies with this part.

§ 713.4 What must my written request contain?

Your written request for records or testimony must include:

(a) The caption of the legal proceeding, docket number, and name of the court or other authority involved.

(b) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance.

(c) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought.

(d) A statement as to how the need for the information outweighs the need to maintain the confidentiality of the information and outweighs the burden on OPIC to produce the records or provide testimony.

(e) A statement indicating that the information sought is not available from another source, such as the requestor's own books and records, other persons or entities, or the testimony of someone other than an OPIC employee, such as retained experts.

(f) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the records or testimony you want.

(g) The name, address, and telephone number of counsel to each party in the case.

(h) An estimate of the amount of time you anticipate that you and other parties will need with each OPIC employee for interviews, depositions, and/or testimony.

§ 713.5 When should I make my request?

Submit your request at least 45 days before the date you need the records or testimony. If you want your request processed in a shorter time, you must explain why you could not submit the request earlier and why you need such expedited processing. If you are requesting the testimony of an OPIC employee, OPIC expects you to anticipate your need for the testimony in sufficient time to obtain it by deposition. The Vice-President/General Counsel may well deny a request for testimony at a legal proceeding unless you explain why you could not have used deposition testimony instead. The Vice-President/General Counsel will determine the location of a deposition, taking into consideration OPIC's interest in minimizing the disruption for an OPIC employee's work schedule and the costs and convenience of other persons attending the deposition.

§ 713.6 Where should I send my request?

Send your request or subpoena for records or testimony to the attention of the Vice-President/General Counsel, OPIC, 1100 New York Avenue NW, Washington, DC 20527.

§ 713.7 What will OPIC do with my request?

(a) *Factors OPIC will consider.* OPIC may consider various factors in reviewing a request for nonpublic records or testimony of OPIC employees, including:

(1) Whether disclosure would assist or hinder OPIC in performing its statutory duties or use OPIC resources unreasonably, including whether responding to the request will interfere with OPIC employees' ability to do their work.

(2) Whether disclosure is necessary to prevent the perpetration of a fraud or other injustice in the matter.

(3) Whether you can get the records or testimony you want from sources other than OPIC.

(4) Whether the request is unduly burdensome.

(5) Whether disclosure would violate a statute, executive order, or regulation, such as the Privacy Act, 5 U.S.C. 552a.

(6) Whether disclosure would reveal confidential, sensitive or privileged information, trade secrets or similar, confidential commercial or financial information, or would otherwise be inappropriate for release and, if so, whether a confidentiality agreement or protective order as provided in § 713.9(a) can adequately limit the disclosure.

(7) Whether the disclosure would interfere with law enforcement proceedings, compromise constitutional rights, or hamper OPIC programs or other OPIC operations.

(8) Whether the disclosure could result in OPIC's appearing to favor one litigant over another.

(9) Any other factors OPIC determines to be relevant to the interests of OPIC.

(b) *Review of your request.* OPIC will process your request in the order it is received. OPIC will try to respond to your request within 45 days, but this may vary, depending on the scope of your request.

(c) *Final determination.* the Vice-President/General Counsel makes the final determination on requests for nonpublic records or OPIC employee testimony. All final determinations are in the sole discretion of the Vice-President/General Counsel. The Vice-President/General Counsel will notify you and the court or other authority of the final determination of your request. In considering your request, the Vice-President/General Counsel may contact you to inform you of the requirements of this part, ask that the request or subpoena be modified or withdrawn, or may try to resolve the request or subpoena informally without issuing a final determination.

§ 713.8 If my request is granted, what fees apply?

(a) *Generally.* You must pay any fees associated with complying with your request, including copying fees for records and witness fees for testimony. The Vice-President/General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the fees.

(b) *Fees for records.* You must pay all fees for searching, reviewing and duplicating records produced in response to your request. The fees will be the same as those charged by OPIC under its Freedom of Information Act regulations, 22 CFR Part 706, Subpart B, § 706.26.

(c) *Witness fees.* Your must pay the fees, expenses, and allowances prescribed by the court's rules for attendance by a witness. If no such fees are prescribed, the local federal district court rule concerning witness fees, for the federal district court closest to where the witness appears, will apply. For testimony by current OPIC employees, you must pay witness fees, allowances, and expenses to the Vice-President/General Counsel by check made payable to the ''Overseas Private Investment Corporation'' within 30 days from receipt of OPIC's billing statement. For the testimony of a former OPIC employee, you must pay witness fees, allowances, and expenses directly to the former employee, in accordance with 28 U.S.C. 1821 or other applicable statutes.

(d) *Certification of records.* OPIC may authenticate or certify records to facilitate their use as evidence. If you require authenticated records, you must request certified copies at least 45 days before the date they will be needed. Send your request to the Vice-President/

General Counsel. OPIC will charge you a certification fee of $5.00 per document.

(e) *Waiver of fees.* A waiver or reduction of any fees in connection with the testimony, production, or certification or authentication of records may be granted in the discretion of the Vice-President/General Counsel. Waivers will not be granted routinely. If you request a waiver, your request for records or testimony must state the reasons why a waiver should be granted.

§ 713.9 If my request is granted, what restrictions may apply?

(a) *Records.* The Vice-President/General Counsel may impose conditions or restrictions on the release of nonpublic records, including a requirement that you obtain a protective order or execute a confidentiality agreement with the other parties in the legal proceeding that limits access to and any further disclosure of the nonpublic records. The terms of a confidentiality agreement or protective order must be acceptable to the Vice-President/General Counsel. In cases where protective orders or confidentiality agreements have already been executed, OPIC may condition the release of nonpublic records on an amendment to the existing protective order or confidentiality agreement.

(b) *Testimony.* The Vice-President/General Counsel may impose conditions or restrictions on the testimony of OPIC employees, including, for example, limiting the areas of testimony or requiring you and the other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which you requested the testimony. The Vice-President/General Counsel may also require you to provide a copy of the transcript of the testimony to OPIC at your expense.

§ 713.10 Defintitions.

For purposes of this part:

Legal proceedings means any matter before any federal, state or foreign administrative or judicial authority, including courts, agencies, commissions, boards, grand juries, or other tribunals, involving such proceedings as lawsuits, licensing matters, hearings, trials, discovery, investigations, mediation or arbitration. When OPIC is a party to a legal proceeding, it will be subject to the applicable rules of civil procedure governing production of documents and witnesses; however testimony and/or production of documents by OPIC employees, as defined, will still be subject to this part.

Nonpublic records means any OPIC records which are exempt from disclosure by statute or under Part 706, OPIC's regulations implementing the provisions of the Freedom of Information Act. For example, this may include records created in connection with OPIC's receipt, evaluation and action on actual and proposed OPIC finance projects and insurance policies (whether such projects or policies were cancelled or not), including all reports, internal memoranda, opinions, interpretations, and correspondence, whether prepared by OPIC employees or by persons under contract, as well as confidential business information submitted by parties seeking to do business with OPIC. Whether OPIC has actually chosen in practice to apply any exemption to specific documents is irrelevant to the question of whether they are ''nonpublic'' for the purposes of this Part.

OPIC employee means current and former officials, members of the Board of Directors, officers, directors, employees and agents of the Overseas Private Investment Corporation, including contract employees, consultants and their employees. This definition does not include persons who are no longer employed by OPIC and are retained or hired as expert witnesses or agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment.

Subpoena means any order, subpoena for records or other tangible things or for testimony, summons, notice or legal process issued in a legal proceeding.

Testimony means any written or oral statements made by an individual in connection with a legal proceeding, including personal appearances in court or at depositions, interviews in person or by telephone, responses to written interrogatories or other written statements such as reports, declarations, affidavits, or certifications or any response involving more than the delivery of records.

Dated: February 9, 1999.

Michael C. Cushing,

Managing Director for Administration.

[FR Doc. 99–4125 Filed 2–18–99; 8:45 am]

BILLING CODE 3210–01–M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Review Commission has concluded that it is in the public interest to supplement the voluntary settlement judge procedure prescribed at 29 C.F.R. 2200.101 with an additional settlement process that would be mandatory for cases where the penalty proposed by the Secretary of Labor is $200,000 or greater or other cases deemed appropriate by the Chief Administrative Law Judge. This additional procedure, to be known as the Settlement Part, would be instituted as a pilot program for a one-year trial period to ascertain whether requiring the parties to appear before a settlement judge facilitates the settlement process with respect to large and complex cases.

During and after the trial period, the Commission will evaluate the results in order to decide whether it should continue the Settlement Part procedure and, if so, what modifications should be made. The evaluation will take into account data on the rate at which settlements are achieved in large and complex cases and the length of time those cases remain on the Commission's docket before a settlement agreement is reached. The Commission will also consider the views of its judges and the parties regarding how well the process is working and how it might be improved.

DATES: This rule is effective from February 19, 1999 until February 22, 2000 unless extended by the Commission by publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, One Lafayette Center, 1120 20th St., N.W. 9th Floor, Washington, D.C. 20036–3419, phone 202–606–5410.

SUPPLEMENTARY INFORMATION:

Development of the Final Rule

On March 2, 1998 the Occupational Safety and Health Review Commission published in the **Federal Register** a proposal to institute, as a pilot program for a one year trial period, a new procedure to be known as the Settlement Part for the purpose of facilitating the settlement process in large and complex cases. 63 FR 10166. The notice explained the reasons why

the Commission developed this proposal and the basis and purpose of each particular provision. The notice included a request for public comment.

In response, the Office of the Solicitor of Labor, which represents the Secretary of Labor in all adjudicative proceedings before the Commission, filed comments on behalf of the Secretary of Labor. Matthew J. Rieder, an attorney in a regional office of the Solicitor of Labor, filed comments setting forth his personal views based on his many years of experience in Commission proceedings. Comments were also received from two law firms, Gibson, Dunn & Crutcher (on behalf of United Parcel Service, the Anheuser-Busch Companies, Inc., and Champion International Corporation) and McDermott, Will & Emery, which is a frequent practitioner before the Commission. The Synthetic Organic Chemical Manufacturers Association, Inc. (''SOCMA''), Alabama Power, and Southern Company also filed comments. The Commission gratefully acknowledges these comments and has made several modifications and clarifications in response to the comments received. After careful consideration, the Commission issues this final rule establishing a mandatory settlement procedure to be evaluated after a one-year trial period.

Need for a Mandatory Procedure

Alabama Power, Southern Company, and SOCMA were strongly supportive of the proposed Settlement Part. All three were in agreement that a mandatory settlement procedure would strongly enhance the possibility that the parties would achieve significant savings in cost and time by reaching a mutually satisfactory resolution of the case.

On the other hand, two commentators, the Secretary and Gibson, Dunn & Crutcher, explicitly took exception to the mandatory nature of the proposed procedure. Gibson, Dunn & Crutcher expressed the view that mandating formal procedures at the outset of the case will obstruct rather than encourage settlements because the procedural requirements—preparing for and attending a conference or conferences and developing a written statement of the issues and the party's position on those issues—would cause the parties' positions to become hardened rather than more flexible and therefore would be unproductive and inefficient. The Secretary stated that her own statistical analysis demonstrates that even in cases in which substantial penalties are in issue the parties are able to achieve settlement within a relatively expeditious period of time under the Commission's existing procedures. Thus, the Secretary concluded that parties who are inclined to settle have sufficient opportunity to do so under the present procedures and imposing a mandatory and structured process would be costly and time-consuming.

At the outset, the Commission believes that the Secretary's estimates of the length of time in which cases achieve settlement may not accurately reflect the Commission's experience. The Secretary notes that ''many cases'' with penalties in excess of $100,000 settle informally before a notice of contest is filed. However, such cases do not become docketed with the Commission and therefore do not affect the Commission's caseload. In addition, the Commission conducted an analysis of the narrower range of cases in which the penalties sought are $200,000 or greater. There were eleven such cases that became final orders through settlement agreements in fiscal year 1997. With the exception of one case which settled before the pleadings were filed, the time between the date the case was assigned to the judge and the date the settlement agreement was reached ranged from 81 to 280 days, with a median time of 190 days, or over six months. Even more significant, in accordance with the Commission's usual practice, these cases were not even assigned to a judge until after the parties filed their pleadings and any preliminary matters were resolved. In almost half of these cases, the time consumed awaiting assignment of a judge added at least four months to the overall case disposition time; one case was not assigned to a judge until almost nine months after docketing and another was not assigned for over a year after docketing. The total time between date of docketing with the Commission and the date the settlement was reached ranged between 135 to 583 days, with a median of 261 days, or almost nine months. Three of these ten cases required over a year to achieve a settlement and one took almost a year. Moreover, of those cases having penalties between $100,000 and $200,000 to which the Secretary refers, most did not settle within 120 days. Rather, the median time between docketing and final disposition was 226 days for those cases in the $100,000–$200,000 range which became final by settlement in fiscal year 1997. The statistics with respect to fiscal year 1998 cases are similar. Of the 25 cases having penalties of at least $200,000 that became final orders through settlement agreements in fiscal year 1998, three took over a year to achieve settlement, two took approximately one year, and two others required approximately 11 months. The total time between date of docketing with the Commission and the date the settlement was reached ranged from 100 to 527 days, with a median of 261 days, for cases having penalties of at least $200,000, and the median time between docketing and final disposition was 238 days for those cases in the $100,000–$200,000 range which became final by settlement in fiscal year 1998. Thus, the Commission's experience does not support the Secretary's contention that high penalty cases generally settle within a relatively short time frame.

The Commission also notes that through the pilot program it seeks to determine whether a mandatory settlement procedure not only would bring large and complex cases to settlement in a shorter period of time but also whether such a procedure would increase the proportion of such cases that settle rather than go to trial. Trials in large cases are always expensive both for the parties and the Commission. In addition, cases that the parties settle voluntarily rarely, if ever, come before the Commission for review of the judge's decision, and therefore settlement reduces costs and conserves resources at the appellate level as well as at the hearing stage of the proceeding. The Commission appreciates the concerns of the commentators that the settlement procedures not be so structured as to ultimately reduce the likelihood of a settlement or impose additional costs and burdens on the parties, and the Commission emphasizes that it is precisely those issues on which it intends to gather information and evaluate as part of the pilot program. The Commission intends to carefully review the pilot program. The Commission will particularly review the relative benefits to and burdens on participants of a mandatory settlement process.

Applicability

Alabama Power and Southern Company suggested that the pilot program include smaller employers by lowering the penalty threshold to $60,000 and that it also be expanded to include all citations for willful violations and any case in which the employer requests that a judge be appointed under the Settlement Part. As explained in the preamble to the proposed rule, the Commission deliberately chose the $200,000 threshold to ensure a sufficiently large sample of cases without overtaxing the resources the Commission could justifiably devote to a pilot program.

Moreover, under the proposed pilot program, the Chief Administrative Law Judge retains discretion to assign other cases to the Settlement Part, and, as discussed more fully below, the settlement judge procedures prescribed in § 2200.101 and the authority of the trial judge to convene settlement conferences under § 2200.67(g), remain in effect for all cases.

The Secretary suggested that the Commission prescribe guidelines for the Chief Administrative Law Judge in selecting the cases which he may assign to the Settlement Part at his discretion. The Commission emphasizes that the Settlement Part is a trial program for one year, and the discretion accorded the Chief Administrative Law Judge was intended to permit some exploration of different criteria and some flexibility in selecting cases for proceeding under the Settlement Part in the event the Commission's caseload warrants including other cases in the pilot program in addition to those cases meeting the $200,000 mandatory threshold.

Assignment of the Settlement Part Judge

Commentator McDermott, Will & Emery expressed the view that while a tentative evaluation of the merits of the case from an impartial third party early in the proceedings can potentially be an effective catalyst for a settlement where negotiation and discussion between the parties has been unsuccessful, that ''first impression'' is best given by the same judge who will be deciding the case. Accordingly, McDermott, Will & Emery suggested that the Commission amend § 2200.67(g) to explicitly provide that the case judge is authorized to conduct settlement conferences regardless of whether settlement has been discussed under the Settlement Part structure or under the voluntary settlement judge procedure at § 2200.101. Alternatively, McDermott, Will & Emery requested that the Commission invite additional public comment on the use of settlement conferences by the case judge after a case has been processed through the Settlement Part or settlement judge procedure.

The Commission does not believe that either of these courses is necessary. The Settlement Part rule merely supplements the existing settlement judge procedure by making essentially the same mechanism available in certain cases which otherwise could have proceeded under the settlement judge process if the parties had so agreed. The Commission's existing rules specifically provide that ''settlement is permitted and encouraged * * * at any stage of the proceedings.'' § 2200.100(a). Nothing in either the proposed Settlement Part or the existing settlement judge rule precludes either party from seeking the assistance of the case judge in facilitating settlement under § 2200.100 after proceedings under § 2200.101 or the Settlement Part have terminated. Under proposed § 2200.109(f)(2) (codified as § 2200.120(f)(1) by this final rule) the Settlement Part Judge may at any time make a determination that further negotiations would be unlikely to achieve settlement. Upon that determination, the case would be assigned to a hearing judge, and the possibility of settlement could be raised at any time during those subsequent proceedings.

Commencement of Settlement Part Proceedings

Both the Secretary and Gibson, Dunn & Crutcher urge that the involvement of the Settlement Part Judge not commence until after the parties have had an opportunity to discuss settlement among themselves without the formal intervention of the judge. The Secretary suggests that because high penalty cases have already shown themselves to be susceptible to settlement at an early stage of the proceedings, the mandatory involvement of the judge should be deferred until after the completion of discovery, at which point the parties would be better able to identify to the judge those areas in which disagreements remain, and the judge would be better able to assist the parties in addressing those areas of disagreement.

The Commission recognizes that in order for a settlement judge to assist the parties, there must be some initial contact between the parties and some development of the parties' positions, whether by some exchange of discovery or by other means. As noted above, however, the Commission's concern relates not only to the proportion of complex or large cases that are resolved by settlement but also to the length of time required to achieve settlement. A primary purpose of the Settlement Part pilot program is to determine whether the settlement process can be expedited if the settlement judge is assigned at an early stage in the proceedings. It is the Commission's hope that as the parties engage in their initial discussions and development of the issues and their positions on those issues the settlement judge will be able to assist and guide the parties toward the objective of a settlement. Accordingly, the Commission does not believe that assignment of the Settlement Part Judge should be deferred until after discovery is underway.

Moreover, the Commission remains concerned as well about the length of time the filing of pleadings or other preliminary matters contributes to the delay in reaching a final disposition in cases where the parties are able to come to an agreement. The Commission therefore amends the proposed rule to authorize the Chief Administrative Law Judge to assign a judge as early as the docketing of the notice of contest under § 2200.33. The Commission expects that the judge will act in his discretion to manage the case with the objective of advancing the case toward a voluntary settlement in a prompt and expeditious manner. The Commission emphasizes that the final rule empowers the judge to issue any orders that in his judgment would facilitate the proceedings, including at the pleading stage.

Duration of Settlement Part Procedures

McDermott, Will & Emery contended that the maximum period of 90 days prescribed under the proposed rule is overly short. Particularly considering that the Commission is amending the proposed rule to allow the proceedings under the Settlement Part to commence as early as the date of docketing, the Commission agrees. Accordingly, by this final rule the Commission is increasing the time allowed for settlement proceedings to 120 days, with an additional period, not to exceed 30 days, permitted at the discretion of the judge. The Commission is cognizant of the fact that it may be necessary for the parties to engage in at least some discovery in order to be in a position to conduct meaningful settlement negotiations. However, the Commission is hopeful that any such discovery can be expedited, and as part of the pilot program the Commission intends to evaluate how effectively the parties are able to use discovery under the Settlement Part procedures. At the same time, while the Commission strongly believes that the cycle time for voluntary dispositions by settlement can be reduced, the Commission also recognizes that the parties must have some degree of flexibility in the length of time needed to achieve a settlement. Furthermore, it clearly would be counterproductive to terminate proceedings under this rule where the parties have been actively pursuing settlement but have been unable to come to a final agreement prior to the expiration of a fixed time period. Therefore, the final rule provides that with the concurrence of the Chief Administrative Law Judge the parties may be granted an extension of no more

than 30 days in which to complete ongoing settlement negotiations. The Commission reiterates its expectation that the parties and the Settlement Part Judge will work together to achieve effective and timely completion of proceedings under § 2200.120.

Attendance at the Settlement Conference

Several commentators expressed opposition to the requirement of proposed § 2200.109(d)(2) that an official of the party having full settlement authority attend settlement conferences along with the party's representative. The Commission does not agree that the requirement is unduly burdensome. The Commission believes that the personal presence of a representative having full settlement authority may be essential for the efficacy of a settlement conference with the judge and will minimize the potential for further drawn-out negotiations. In the Commission's view, the savings in time, effort, and potential further negotiations outweighs any inconvenience to the parties that may ensue by requiring the presence of an individual authorized to make a final commitment for that party. The Commission notes, in that regard, that this provision for personal presence is patterned after the practice in courts of requiring the presence of a responsible official of each party at settlement conferences.

Commentator Matthew Rieder expressed the concern that § 2200.109(d)(2) may be impractical because it could require the attendance of high-level officials both from the Office of the Solicitor and the Office of the Assistant Secretary for Occupational Safety and Health (''OSHA''). Mr. Rieder noted that in general the individuals having settlement authority for the Secretary are the Regional Solicitor and the OSHA Regional Administrator and that the Secretary's internal operating procedures vest final authority for the conduct of certain cases at the level of Deputy Solicitor and Deputy Assistant Secretary or above. *See, e.g.,* OSHA Instruction CPL 2.80, *Handling of Cases to be Proposed for Violation-By-Violation Penalties,* sections H.4.c & H.6.d (Oct. 21, 1990). Nevertheless, the Commission does not agree that § 2200.109(d)(2) is impractical or would impose an undue burden on the Secretary. The individual having authority for cases under the Secretary's procedures would necessarily be familiar with the cases under their purview. Involving these individuals in settlement discussions and negotiations merely continues their case responsibility and would occur under the Commission's existing settlement rules in any event. To the extent that the personal presence of the Regional Solicitor or other officials either of the Solicitor's office or of OSHA might not be practical in any particular case, any such difficulties could be avoided by an appropriate delegation of authority. For example, the Justice Department has prescribed regulations setting forth the authority to accept settlement offers at various levels within that agency. 28 CFR §§ 0.160–0.172 and directives issued pursuant thereto. Indeed, the Secretary presently delegates settlement authority in certain cases, OSHA Instruction CPL 2.90, *Guidelines for Administering of Corporate-Wide Settlement Agreements,* sections F.4.a & G.3 (June 3, 1991), and, as Mr. Rieder himself noted in his comment, Regional Solicitors in certain cases may now delegate settlement authority to counsel.

In any event, although the Commission does not expect that the proposed rule will prove unduly burdensome for any party, the practicality of the requirement for attendance of a representative having full settlement authority will be evaluated during the course of the pilot program. While the Commission appreciates the concerns voiced by the commentators, the Commission does not regard those concerns as sufficient grounds to modify the Settlement Part rule at this time insofar as the rule permits the judge to require the attendance of individuals having full settlement authority when the judge deems it appropriate and mandates compliance by the parties with any such order issued by the judge.

Confidentiality

The Commission gave a great deal of thought and consideration to the issue of preserving the confidentiality of settlement negotiations and discussions. The Commission received no comments regarding § 2200.109(d)(3) with one exception. The rule as proposed precludes the Settlement Part Judge from disclosing any information revealed in private discussions with a party absent that party's consent. The Secretary, however, expressed concern that the judge might require the Secretary to divulge to other parties privileged information, principally the identity of informers. While it is conceivable, the Commission does not consider it very likely that a party would be compelled to disclose the identity of informants during the settlement process or that an agreement to settle would be made conditional on release of the identity of informers. It is the expectation that the identity of confidential informants will be treated consistent with Commission precedent—that is, protected from disclosure. In any event, the Commission assures the Secretary that protection of the identity of informers as well as the other issues addressed in this preamble have been and will continue to be included within the training the Commission is conducting for its judges assigned to the Settlement Part. Indeed, the Commission views training of settlement judges as critical and is committed to continue to conduct appropriate training.

Other Issues

In the preamble to the proposed rule, 63 FR 10166, the Commission did not expressly make clear what would happen to cases assigned to the Settlement Part and still pending when the pilot program is concluded. Any case assigned to the Settlement Part during the pendency of this rule will continue to be processed under the provisions of the rule until the termination of proceedings in accordance with § 2200.120(f) of the final rule even if the rule itself is no longer in effect at that time.

List of Subjects in 29 CFR Part 2200

Administrative practice and procedure, Hearing and appeal procedures.

For the reasons set forth in the preamble, the Occupational Safety and Health Review Commission amends Title 29, Chapter XX, Part 2200 of the Code of Federal Regulations as follows:

PART 2200—RULES OF PROCEDURE

1. The authority citation continues to read as follows:

Authority: 29 U.S.C. 661(g).

2. Subpart H is added to Part 2200 to read as follows:

Subpart H—Settlement Part

§ 2200.120 Settlement part.

(a) *Applicability.* This section applies only to notices of contest by employers in which the aggregate amount of the penalties sought by the Secretary is $200,000 or greater and notices of contest by employers which are determined to be suitable for assignment under this section for reasons deemed appropriate by the Chief Administrative Law Judge.

(b) *Proceedings under this Part.* Notwithstanding any other provisions of these rules, upon the docketing of the notice of contest or at such other time as he deems appropriate the Chief

Administrative Law Judge shall assign to the Settlement Part any case which satisfies the criteria set forth in paragraph (a) of this section. The Chief Administrative Law Judge shall either act as or appoint a Settlement Part Judge, who shall be a Judge other than the one assigned to hear and decide the case, to conduct proceedings under the Settlement Part as set forth in this section.

(c) *Powers and duties of Settlement Part Judges.* (1) The Judge shall confer with the parties on subjects and issues of whole or partial settlement of the case.

(2) The Judge shall seek resolution of as many of the issues in the case as is feasible.

(3) The Judge may require the parties to provide statements of the issues in controversy and the factual predicate for each party's position on each issue or may enter other orders as appropriate to facilitate the proceedings.

(4) The Judge may allow or suspend discovery during the time of assignment.

(5) The Judge may suggest privately to each attorney or other representative of a party what concessions his or her client should consider, and assess privately with each attorney or other representative the reasonableness of the party's case or settlement position.

(d) *Settlement conference*—(1) *General.* The Settlement Part Judge shall convene and preside over conferences between the parties. All settlement conferences shall be held in person. The Judge shall designate a place and time of conference.

(2) *Participation in conference.* The Settlement Part Judge may require that any attorney or other representative who is expected to try the case for each party be present. The Settlement Part Judge may also require that the party's representative be accompanied by an official of the party having full settlement authority on behalf of the party. The parties and their representatives or attorneys are expected to be completely candid with the Settlement Part Judge so that he may properly guide settlement discussions. The failure to be present at a settlement conference or otherwise to comply with the orders of the Settlement Part Judge or the refusal to cooperate fully within the spirit of this rule may result in the imposition of sanctions under § 2200.41.

(3) *Confidentiality.* All statements made, and all information presented, during the course of proceedings under this section shall be regarded as confidential and shall not be divulged outside of these proceedings except with the consent of the parties. The Settlement Part Judge shall if necessary issue appropriate orders in accordance with § 2200.11 to protect confidentiality. The Settlement Part Judge shall not divulge any statements or information presented during private negotiations with a party or his representative except with the consent of that party. No evidence of statements or conduct in proceedings under this section within the scope of Federal Rule of Evidence 408, no notes or other material prepared by or maintained by the Settlement Part Judge, and no communications between the Settlement Part Judge and the Chief Administrative Law Judge including the report of the Settlement Part Judge under paragraph (f) of this section, will be admissible in any subsequent hearing except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless obtained through appropriate discovery of subpoena. The Settlement Part Judge shall not discuss the merits of the case with any other person, nor appear as a witness in any hearing of the case.

(e) *Record of proceedings.* No material of any form required to be held confidential under paragraph (d)(3) of this section shall be considered part of the official case record required to be maintained under 29 U.S.C. 661(g), nor shall any such material be open to public inspection as required by section 661(g), unless the parties otherwise stipulate. With the exception of an order approving the terms of any partial settlement agreed to between the parties as set forth in paragraph (f)(1) of this section, the Settlement Part Judge shall not file or cause to be filed in the official case record any material in his possession relating to these proceedings, including but not limited to communications with the Chief Administrative Law Judge and his report under paragraph (f) of this section, unless the parties otherwise stipulate.

(f) *Report of Settlement Part Judge.* (1) The Settlement Part Judge shall promptly notify the Chief Administrative Law Judge in writing of the status of the case at such time that he determines further negotiations would be fruitless. If the Settlement Part Judge has not made such a determination and a settlement agreement is not achieved within 120 days following assignment of the case to the Settlement Part Judge, the Settlement Part Judge shall then advise the Chief Administrative Law Judge in writing of his assessment of the likelihood that the parties could come to a settlement agreement if they were afforded additional time for settlement discussions and negotiations. The Chief Administrative Law Judge may then in his discretion allow an additional period of time, not to exceed 30 days, for further proceedings under this section. If at the expiration of the period allotted under this paragraph the Settlement Part Judge has not approved a full settlement pursuant to § 2200.100, he shall furnish to the Chief Administrative Law Judge copies of any written stipulations and orders embodying the terms of any partial settlement the parties have reached.

(2) At the termination of the settlement period without a full settlement, the Chief Administrative Law Judge shall promptly assign the case to an Administrative Law Judge other than the Settlement Part Judge or Chief Administrative Law Judge for appropriate action on the remaining issues.

(g) *Non-reviewability.* Notwithstanding the provisions of § 2200.73 regarding interlocutory review, any decision concerning the assignment of a Settlement Part Judge or a particular Judge and any decision by the Settlement Part Judge to terminate proceedings under this section is not subject to review by, appeal to, or rehearing by any subsequent presiding officer, the Chief Administrative Law Judge, or the Commission.

Dated: February 12, 1999.

Stuart E. Weisberg,

Chairman.

Dated: February 12, 1999.

Thomasina V. Rogers,

Commissioner.

[FR Doc. 99–4076 Filed 2–18–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 71

[FRL–6300–9]

RIN 2060–AG90

Federal Operating Permits Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates regulations setting forth EPA's approach for issuing Federal operating permits to covered stationary sources in Indian country, pursuant to title V of the Clean Air Act as amended in 1990 (CAA). Consistent with EPA's Indian Policy, the CAA authorizes the Agency to protect

air quality in Indian country by administering a Federal operating permits program in areas lacking an EPA-approved or adequately administered operating permits program. Implementation of today's rule will benefit the environment by assuring that the benefits of title V, such as increased compliance and resulting decreases in emissions, extend to every part of Indian country. This action potentially applies to all industry sectors.

EFFECTIVE DATE: March 22, 1999.

ADDRESSES: Supporting information used in developing the promulgated rules is contained in Docket No. A–93–51. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket, Room M–1500, Waterside Mall, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Candace Carraway (telephone 919–541–3189), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Information Transfer and Program Integration Division, Mail Drop 12, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Background Information Document

A background information document (BID) for the promulgated rule may be obtained from the docket. Please refer to the ''Federal Operating Permits Program—Response to Comments.'' The BID contains a summary of the public comments made on the proposed Federal Operating Permits Program rule published on March 21, 1997 and the public comments made on the proposed Federal Operating Permits Program rule published on April 27, 1995 that pertain to the subject matter of this rulemaking, and EPA responses to the comments. Comments addressed in the preamble to this rule are generally not duplicated in the BID.

Regulated Entities

Entities potentially regulated by this action are stationary sources that (1) are located in Indian country or an area for which EPA believes the Indian country status is in question;[1] and (2) are major sources, affected sources under title IV of the CAA (acid rain sources), solid waste incineration units required to obtain a permit under section 129 of the CAA, or sources subject to a standard under section 111 or 112 of the CAA except those area sources that have been exempted or deferred from title V permitting requirements. Regulated categories and entities include:

Category	Examples of regulated entities
Air pollution sources in all industry sectors located in Indian country.	Major sources under title I, section 112, or section 302 of the CAA; affected sources under title IV of the CAA (acid rain sources); solid waste incineration units required to obtain a permit under section 129 of the CAA; sources subject to standards under section 111 or 112 of the CAA that are not area sources exempted or deferred from permitting requirements under title V.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in section 71.3(a) of the rule, the definition of ''Indian country'' in section 71.2 of the rule, and the provisions of section 71.4 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section or the EPA Regional Office that is administering the part 71 permit program for the area in which the relevant source or facility is located.

Outline

The contents of today's preamble are listed in the following outline:

I. Background of the Final Rule

Title V of the CAA as amended in 1990 (42 U.S.C. 7661 *et seq.*) requires that EPA develop regulations that set minimum standards for State operating permits programs. Those regulations, codified in part 70 of chapter I of title 40 of the Code of Federal Regulations, were promulgated on July 21, 1992 (57 FR 32250). Title V also requires that EPA promulgate, administer, and enforce a Federal operating permits program when a State does not submit an approvable program within the time frame set by title V or does not adequately administer and enforce its EPA-approved program. On April 27, 1995, EPA proposed regulations (60 FR 20804) (hereinafter ''1995 proposal'') setting forth the procedures and terms under which the Agency would administer a Federal operating permits program. The final rule was published on July 1, 1996 (61 FR 34202) and is codified at 40 CFR part 71. The regulations authorize EPA to issue permits when a State, local, or Tribal agency has not developed an approved program, has not adequately administered or enforced its approved operating permits program, or has not issued permits that comply with the applicable requirements of the Act.

Indian Tribes are not required to develop operating permits programs, though EPA encourages Tribes to do so. See, e.g., Indian Tribes: Air Quality Planning and Management, 63 FR 7253 (February 12, 1998) (hereinafter ''Tribal Authority Rule''). The EPA expects that most Tribes will not develop title V operating permit programs, in part due

[1] The EPA believes that a few sources that are subject to title V requirements may be located in areas where, in the Agency's judgment, there is a bona fide question whether the area is Indian country within the meaning of 18 U.S.C. § 1151 and as defined in this rule. As described more fully elsewhere in this preamble, EPA believes the objectives of the Act and protection of air quality will be more effectively served if EPA administers a part 71 program in such areas. Unless it is otherwise apparent from the context, when this preamble uses the term ''Indian country,'' it is intended that the term also refer to areas for which EPA believes there is a bona fide question about whether the area is Indian country.

to the resources required to develop such a program. Within Indian country, EPA believes it is generally appropriate that EPA promulgate, administer, and enforce a part 71 Federal operating permits program for stationary sources until Tribes receive approval to administer their own operating permits programs.

In the 1995 proposal, EPA stated its intention to implement part 71 programs to ensure coverage of Tribal areas which EPA proposed to define as ''those lands over which an Indian Tribe has authority under the Clean Air Act to regulate air quality.'' The final part 71 rule did not include provisions relating to the boundaries of part 71 programs in Tribal areas because EPA planned to address these issues in a rule that specified provisions of the CAA for which EPA believes it is appropriate to treat Indian Tribes in the same manner as States, pursuant to section 301(d)(2) of the CAA. See 59 FR 43956 (August 25, 1994) (''Indian Tribes: Air Quality Planning and Management,'' hereinafter ''proposed Tribal Authority Rule'').

Subsequently, on March 21, 1997, EPA proposed a different approach to administering the part 71 program for areas of Indian country that are not covered by an approved State or Tribal part 70 program (hereinafter ''1997 proposal''). See 62 FR 13748. In the 1997 proposal, EPA explained that the 1995 proposal's definition of ''Tribal area'' (i.e., the Indian lands where EPA would exercise authority to implement a Federal permit program) was inappropriate. The 1995 proposal was generally based on two aspects of the proposed Tribal Authority Rule: EPA's interpretation of Tribal jurisdiction under the CAA and the procedures by which Tribes could demonstrate jurisdiction to implement their own programs under the CAA. The approach of the 1995 proposal would have required Tribes to establish their jurisdiction over certain areas of Indian country before EPA could implement a Federal program for those areas. The EPA noted in the 1997 proposal that the approach of the 1995 proposal could create gaps in program coverage. The EPA believes it is more consistent with the CAA that EPA administer part 71 programs in Indian country without requiring any jurisdictional showing on the part of the Tribe. The Agency's authority under the CAA is not premised on Tribal authority. Furthermore, in proposing that EPA implement part 71 throughout Indian country, the 1997 proposal was consistent with the Agency's general policy of administering environmental programs in Indian country until a Tribe assumes regulatory responsibility. See, e.g., EPA's 1984 Indian Policy (''Policy for the Administration of Environmental Programs on Indian Reservations,'' signed by William D. Ruckelshaus, Administrator of EPA, dated November 8, 1984), reaffirmed by EPA Administrator Browner in 1994 (memorandum entitled ''EPA Indian Policy,'' signed by Carol M. Browner, Administrator of EPA, dated March 14, 1994); Underground Injection Control Programs for Certain Indian Lands, Final Rule, 53 FR 43096, 43097 (Oct. 25, 1988). The docket for today's rulemaking contains copies of these documents.

In the 1997 proposal, EPA proposed to interpret the CAA as authorizing EPA to protect air quality by directly implementing provisions of the CAA throughout Indian country. Further, the 1997 proposal stated EPA's belief that under the CAA, Congress intended to allow eligible Tribes to implement programs for all air resources within the exterior boundaries of Indian reservations without distinguishing among various categories of on-reservation land. In light of this territorial view of Tribal jurisdiction, other provisions of the CAA, and the legislative history, the proposal asserted EPA's belief that Congress preferred that implementation of the CAA in Indian country be carried out by either EPA or the Tribes. The bases for this interpretation are discussed in detail in the 1997 proposal at 62 FR 13748, 13750; in section III.A of this preamble; in sections II.A and II.B of the preamble to the proposed Tribal Authority Rule at 59 FR 43956, 43958–61; and in section II.A of the preamble to the final Tribal Authority Rule at 63 FR 7254–7260.

Consistent with the Agency's interpretation of the CAA as described above, in the 1997 proposal, EPA proposed to implement the title V program even in areas of Indian country where a State previously may have been able to demonstrate jurisdiction. The EPA would not implement a part 71 program when a part 70 program has been explicitly approved by EPA for the area, unless such approval was later withdrawn. Under the 1997 proposal, where there was a ''dispute'' as to whether a particular area is Indian country, EPA would run the title V program in that area until the dispute was satisfactorily resolved. The proposal suggested that State or Tribal governments could submit to EPA sufficient information to demonstrate to EPA's satisfaction that a question exists about whether an area is Indian country.

In the 1997 proposal, EPA proposed to add a definition of the term ''Indian country'' as defined in 18 U.S.C. § 1151. In addition, EPA proposed to delete the term ''Tribal area'' from the rule.[2] Consistent with the proposal's approach to implementing the title V program in Indian country, EPA proposed not to adopt regulatory language (from the 1995 proposal) that would have referred to Tribal assertions of jurisdiction. Instead, proposed section 71.4(b) would establish EPA's authority to administer the part 71 program within Indian country even where the Tribe had not demonstrated its jurisdiction over the area. Also, unlike the 1995 proposal, the 1997 proposal did not provide that EPA would solicit comments on the boundaries of the program through area-specific rulemakings or that governmental entities would be notified of the proposed boundaries. Rather, the issue of whether a specific source was subject to the part 71 program would be resolved in the context of permitting the source.

In the 1997 proposal, EPA stated that sources that are uncertain as to whether they are located in Indian country should confer with the appropriate Regional office, and that EPA would undertake outreach efforts to notify sources that the Agency believes would be subject to the program. The proposal stated that even sources that do not receive notification would be responsible for ascertaining whether they are located in Indian country. In the proposal, EPA solicited comments on what steps EPA should take to provide notice to sources that they are located in Indian country.

Finally, EPA proposed to clarify through a proposed revision to section 71.4(b) that EPA would administer the part 71 program throughout Indian country except where a part 70 program has been given full or interim approval.

II. Summary of the Final Rule

The final rule establishes EPA's approach for issuing part 71 permits to sources in Indian country. The EPA will administer the part 71 program within Indian country unless a Tribal or State part 70 program has been explicitly approved for the area. The EPA will administer the program within Indian country even where a Tribe has not established its authority to regulate air resources within the same area. To assure that there are no gaps in title V coverage for sources in Indian country, EPA will also administer the part 71 program within areas for which EPA

[2] Note that the final 1996 rule did not adopt a definition of ''Tribal area.'' The 1995 proposal contained a proposed definition for the term which EPA deferred adopting pending today's follow-up rulemaking.

believes the Indian country status is in question, until EPA explicitly approves or extends approval of a State or Tribal program to cover the area.

The EPA will consult with Tribes, the Department of the Interior (DOI), States, and stakeholders as needed to assess whether sources are located in Indian country. The EPA will not conduct additional, separate notice and comment rulemakings, but will provide notice to State and local governments and Tribes each time it notifies sources that they are subject to the part 71 program.

Within a year of the effective date of the program (or some earlier deadline set by the EPA Regional Offices), sources that are subject to the program must submit a permit application. Sources that become subject to the program at a later date must submit permit applications within a year of becoming subject to the program.

Sources are responsible for ascertaining whether they are subject to the part 71 program. However, EPA will conduct outreach and provide notice to sources that it believes are subject to the part 71 program. Further, sources that are uncertain if they are located in an area covered by the program or that have other questions concerning whether they are subject to the program may informally consult with their EPA Regional Office or may formally request EPA to make an applicability determination. Submission of a formal request does not stay the permit application deadline. The EPA's applicability determinations made pursuant to section 71.3(e) are final Agency actions for judicial review purposes under CAA section 307(b). The EPA will publish notice of final permitting actions (including revision, issuance and denial of permits) in the **Federal Register**.

Sources that are subject to the program must pay permit fees, but EPA may reduce permit fees for sources that are located in areas for which EPA believes the Indian country status is in question and that have also paid permit fees to a State or local agency that has attempted to apply its EPA-approved part 70 program in the area. Sources that are explicitly determined to be located in Indian country are not eligible for a fee reduction.

Although EPA does not generally recognize State or local air regulations as being effective within Indian country for purposes of the CAA, today's rule does not address the validity of State and local law and regulations with respect to sources in Indian country or the authority of State and local agencies to regulate such sources for purposes other than the CAA. Rather, this rule describes the Agency's authority to administer the Federal Operating Permits Program and the Agency's general position that State and local law do not affect the applicability of this program in Indian country.

The effective date of the part 71 program in Indian country is March 22, 1999.

III. Major Issues Raised by Commenters

A. Scope of the Federal Program

Under today's rule, the part 71 program will be implemented throughout Indian country. The Federal program will apply except where a part 70 program has been explicitly approved by EPA to cover an area of Indian country. The EPA generally will implement the part 71 program even in areas of Indian country where a State may be able to demonstrate jurisdiction. As explained in detail in section III.A.2 below, EPA's view of its authority is supported by CAA sections 301(d)(4) and 301(d)(2)(B) and several other provisions of the CAA as well as its legislative history.

1. Comments on the 1997 Proposal

The EPA received numerous comments regarding the scope of the Federal title V program for Indian lands. Several State and industry commenters assert that Indian country is not the appropriate scope for the part 71 rule and suggest alternatives to using Indian country. Several industry commenters believe that the Federal program should be limited to ''Tribal areas'' as proposed to be defined in the 1995 proposal. A State commenter believes ''reservation lands'' would be more consistent with the statute. Tribal commenters generally supported EPA's approach of implementing part 71 throughout Indian country in the absence of approved part 70 programs.

State and industry commenters assert that EPA does not have authority to implement the title V program throughout Indian country. Several State and industry commenters state that the 1997 proposal ignores State authority, particularly authority over non-Indian-owned fee lands (fee lands) within reservations. Citing several cases, including *Montana* v. *United States*, 450 U.S. 544 (1981), *Brendale* v. *Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989), and *Strate* v. *A–1 Contractors*, 117 S.Ct. 1404 (1997), these commenters assert that States may have authority over fee lands and that Tribes generally do not have authority over such lands. One State commenter believes that because States may have jurisdiction over fee lands, Federal jurisdiction must be determined on a case-by-case basis. Several State commenters believe that the language in CAA section 301(d)(2)(B) that Tribes may be treated in the same manner as States for reservations ''or other areas within the Tribe's jurisdiction'' means that Tribes must first make a jurisdictional showing before EPA may federally implement the CAA in Indian country. One State commenter asserts that the Indian country standard in the proposed rule is illogical in light of CAA section 301(d)(2)(B), coupled with the provision in CAA section 101 ''that air pollution prevention * * * and air pollution control at its source is the primary responsibility of States and local governments.''

Several State and industry commenters assert that EPA's authority to federally implement the title V program is limited to situations where a State fails to adopt or implement an adequate program. One industry commenter states that EPA's proposal to extend part 71 throughout Indian country conflicts with CAA sections 502(i) and 505, which specify those actions EPA may take to override a State's part 70 program and which limit EPA's authority to intervene in an approved State part 70 program. Several commenters assert that their States have not failed to adopt or adequately implement part 70 programs. Several State and industry commenters contend that State programs currently cover parts of Indian country, including non-Indian-owned lands within reservations. One State commenter believes that EPA's proposed interpretation of the CAA as generally authorizing EPA to implement the title V program even in areas of Indian country where a State may be able to demonstrate jurisdiction may conflict with CAA section 116, which the commenter believes establishes that the CAA is not to be implemented in derogation of State authority to regulate air quality.

Some State and industry commenters disagree with EPA's view, as described in the 1997 part 71 proposal and the then proposed Tribal Authority Rule, that Congress intended a territorial approach to Tribal jurisdiction for all air resources within the exterior boundaries of Indian reservations without distinguishing among various categories of on-reservation land. A Tribal commenter agrees with the view expressed by EPA in those proposals that Congress delegated authority to eligible Tribes to implement the CAA over all reservation sources. One industry commenter argues that EPA's

interpretation that CAA section 301(d) expressed a Congressional preference for either Federal or Tribal implementation in Indian country is not correct and that EPA provided no reasonable basis in support of this interpretation of the CAA. One industry commenter states that there would not be a jurisdictional void if EPA administered the program for reservations and a State program is available for non-reservation areas of Indian country. Several industry commenters believe that there would be no gap in coverage if EPA allowed States to implement the title V program over non-Indian-owned lands within the reservation.

A number of State and industry commenters assert that EPA's approach of applying the Federal title V program throughout Indian country is not the most sensible way of implementing the CAA. One industry commenter states that CAA section 301(d) gives EPA authority to allow States to provide title V permit coverage over fee lands within reservations and other non-Indian-owned lands in non-reservation areas of Indian country. This commenter states that nothing in the CAA prohibits States from implementing the CAA on non-Indian lands within reservations. One commenter believes EPA's approach creates a need to resolve jurisdictional questions even in cases where the Tribe may have no interest in pursuing jurisdiction. Several commenters state that EPA should allow facilities currently operating under a State part 70 program to continue unless the Tribe shows jurisdiction. Several industry commenters express concern that under the proposed approach they would have to comply with both State title V programs and EPA title V programs.

State and industry commenters believe there are policy reasons why EPA should allow States to implement the title V program in Indian country. Commenters assert that State, rather than EPA, implementation is more sensible because States have greater experience and resources and are physically closer to the regulated sources. These commenters also assert that State implementation of the title V program over non-Indian-owned lands within Indian country would make State-wide and interstate planning easier, make State-wide regulation more uniform, and avoid piecemeal regulation over small tracts of land. One industry commenter asserts that EPA has not demonstrated that it has the resources to implement the title V program in Indian country. One industry commenter asserts that a cooperative approach involving State-Tribal cooperative agreements would be more effective than Federal implementation and EPA's approach seems to rule these out.

Some industry commenters believe there is too much uncertainty about the status of dependent Indian communities and other non-reservation categories of Indian country. Some commenters are concerned that under the Indian country standard, title V implementation might shift among regulators depending on land ownership.

Finally, several State and industry commenters believe that States should implement the title V program in areas where the Indian country status is in question. These commenters assert that State implementation would be more efficient and avoid confusion, delay, and unnecessary expense for permittees. One commenter asserts that no environmental benefit would be derived from requiring facilities operating under an approved State part 70 program to obtain a Federal part 71 permit while jurisdiction is being resolved.

2. Description of Final Rule and EPA's Response to Comments

Under today's final rule, the Federal title V permitting program will apply throughout Indian country except where a part 70 program has been explicitly approved by EPA to cover an area of Indian country. The EPA's implementation in these areas will continue until EPA explicitly approves or extends approval of a part 70 program covering an area of Indian country. The Federal program will also apply in areas for which EPA believes the Indian country status is in question.

The CAA provides EPA with the authority to run the title V program in Indian country. In light of the statutory language in CAA sections 101(b)(1), 301(a), 301(d)(2)(B), and 301(d)(4) as well as the overall statutory scheme, EPA is exercising the rulemaking authority entrusted to it by Congress to directly implement title V programs throughout Indian country and in areas for which EPA believes the Indian country status is in question. See generally, *Chevron U.S.A., Inc.* v. *NRDC,* 467 U.S. 837, 842–45 (1984). This interpretation of EPA's authority under the CAA is based in part on the general purpose of the CAA, which is national in scope. As stated in CAA section 101(b)(1), Congress intended to ''protect and enhance the quality of the *Nation's air resources* so as to promote the public health and welfare and the productive capacity of its population'' (emphasis added). Congress intended for the CAA to be a general statute applying to all persons, including those within Indian country. *See Phillips Petroleum Co.* v. *EPA*, 803 F.2d 545, 553–558 (10th Cir. 1986) (holding that the Safe Drinking Water Act applied to Indian Tribes and lands by virtue of being a nationally applicable statute).

The CAA section 301(a) provides EPA broad authority to issue regulations that are necessary to carry out the functions of the CAA. Moreover, several provisions of the CAA call for a Federal program where, for example, a State fails to adopt a program, adopts an inadequate program, or fails to adequately implement a required program. See, e.g., CAA sections 110(c)(1), 502(d)(3), and 502(i)(4). These provisions exist in part to ensure that whether or not local governments choose to participate in implementing the CAA, the purposes of the CAA will be furthered throughout the Nation. Especially in light of the problems associated with transport of air pollution across State and Tribal boundaries, it follows that Congress intended that EPA also would have the authority to operate a Federal program in instances when Tribes choose not to develop a program, do not adopt an approvable program, or fail to adequately implement an air program authorized under CAA section 301(d). Read in the context of the CAA as a whole, these provisions authorize EPA to implement the CAA in Indian country, without limiting EPA's authority to areas for which Tribes have made a jurisdictional showing.

This interpretation is most evident from Congress' grant of authority to EPA under CAA section 301(d)(4). Section 301(d)(4) authorizes the Administrator to directly administer provisions of the CAA so as to achieve the appropriate purpose, where Tribal implementation of those provisions is inappropriate or administratively infeasible. EPA has determined that it is inappropriate to subject Tribes to the deadlines and sanctions provisions of title V. See 40 CFR § 49.4(h) and (i). That determination triggers EPA's 301(d)(4) authority to administer the part 71 program for areas over which a Tribe may potentially receive CAA program approval. As noted in the final Tribal Authority Rule, EPA interprets the CAA as establishing a territorial approach to CAA implementation within Indian reservations by delegating to eligible Tribes CAA authority over all reservation sources without differentiating among the various categories of on-reservation lands. 63 FR 7253–7258. In addition, the CAA authorizes Tribes to implement CAA programs in non-reservation areas over which a Tribe has jurisdiction, generally

including all areas of Indian country. *Id.* at 7258–7259.

Under CAA section 301(d)(4), Congress authorized EPA to maintain the territorial approach by implementing the CAA throughout Indian reservations in the absence of an EPA-approved Tribal program. The EPA believes that Congress authorized the Agency, consistent with EPA's Indian Policy, to avoid the checkerboarding of reservations based on land ownership by federally implementing the CAA over all reservation sources in the absence of an EPA-approved Tribal program. See S. Rep. No. 228, 101st Cong., 1st Sess. 79 (1989)(implementation of the CAA to be in a manner consistent with EPA's Indian Policy). In addition, section 301(d)(4) authorizes the Agency to implement the CAA in non-reservation areas of Indian country in order to fill any gap in program coverage and to ensure an efficient and effective transition to Tribal programs.

The EPA's interpretation of CAA section 301(d) as authorizing EPA implementation throughout Indian country is also supported by the legislative history. S. Rep. No. 228, 101st Cong., 1st Sess. 80 (1989) (noting that CAA section 301(d) authorizes EPA to implement CAA provisions throughout ''Indian country'' where there is no Tribal program); *Id.* at 80 (noting that criminal sanctions are to be levied by EPA, ''consistent with the Federal government's general authority in Indian Country''); *Id.* at 79 (the purpose of section 301(d) is to ''improve the environmental quality of the air wit[h]in Indian country in a manner consistent with the EPA Indian Policy'').

The EPA believes that it can implement the title V program in Indian country without first finding that a State has failed to submit a program or that a State's program is inadequate. As noted above, CAA section 301(d)(4) authorizes EPA to implement the CAA throughout Indian country and does not require a finding of failure to submit or inadequacy. No provision in the CAA prohibits EPA from implementing the CAA in Indian country absent a finding of failure to submit or inadequacy. In fact, CAA section 502(d)(3) requires EPA, by November 15, 1995, to promulgate, administer and enforce a title V program where ''a program meeting the requirements of this subchapter has not been approved in whole for any State.'' This provision is not conditioned upon EPA making a failure to submit or inadequacy determination. While EPA's final Tribal Authority Rule makes the November 15, 1995 deadline inapplicable in the context of Tribal implementation of the CAA, EPA remains under an obligation to implement title V in Indian country. See 63 FR at 7264–7265.

Furthermore, Congress could not have intended that EPA must make an inadequacy or failure to submit determination before EPA could implement the CAA in Indian country because States generally lack authority over Indians in Indian country. *California* v. *Cabazon Band of Mission Indians, 480 U.S. 202 (1987).* In addition, such a determination by EPA may result in the application of sanctions against States; it would be nonsensical to punish States where they lack authority over Indian country since States are powerless to remedy such a ''deficiency.''

In response to comments that some States may have authority over non-Indian activities on reservation fee lands, EPA believes that in the context of regulating air pollution, States generally will not have jurisdiction over these lands. *See* 63 FR at 7256–7257; 53 FR 43080 (Oct. 25, 1988)(notice of denial of Washington department of Ecology UIC Program for Indian lands). Furthermore, as discussed above, EPA interprets the CAA as favoring unitary management of reservation air resources and delegating Federal authority to eligible Tribes to implement the CAA over all sources within reservations, including non-Indian sources on fee lands. Accordingly, even if a State could demonstrate authority over non-Indian sources on fee lands, EPA believes that the CAA generally provides the Agency the discretion to federally implement the CAA over all reservation sources in order to ensure an efficient and effective transition to Tribal CAA programs and to avoid the administratively undesirable checkerboarding of reservations based on land ownership.

Federal implementation of the title V program does not conflict with CAA sections 101 or 116. Neither of these provisions extends State jurisdiction into Indian country where it does not already exist. See *Washington Department of Ecology* v. *EPA*, 752 F.2d 1465 (9th Cir. 1985). The provision of section 101(a) cited by the commenter only expresses the general view that air pollution regulation is the primary responsibility of the States and localities. Congress has made it clear that for reservations and for non-reservation areas over which Tribes can demonstrate jurisdiction (generally including all non-reservation areas of Indian country), Tribes are the entities with primary responsibility to regulate air quality. See CAA section 301(d); S. Rep. No. 228, 101st Cong., 1st Sess. 79 (1989). EPA's implementation of the CAA where Tribes have yet to develop approvable programs is consistent with section 101(a). Furthermore, the approach finalized today does not conflict with section 116. Section 116 provides that the CAA does not preclude or deny the right of any State to adopt or enforce any standard or limitation respecting emissions of air pollutants or any requirement respecting control or abatement of air pollution. Broadly speaking, section 116 reserves to the States the right to set State emission standards and limitations that are more stringent than and/or in addition to Federal requirements. Section 116 does not preclude EPA from implementing CAA programs. As discussed in detail in section III.B below, this rule only addresses Federal implementation of the CAA. For purposes of this rulemaking, EPA does not believe it is necessary to resolve whether States are precluded from regulating air resources in Indian country solely under color of State law or whether the reservation of rights embodied in section 116 extends to Indian country in some cases.

The EPA shares the concerns expressed by commenters about fair, efficient, and effective implementation of the CAA. In finalizing this rule, EPA sought to weigh and balance several objectives including: avoiding gaps in title V coverage; minimizing jurisdictional disputes; allowing for a smooth transition to Tribal programs; avoiding checker-boarding of reservations; protecting Tribal sovereignty; minimizing uncertainty, delay, and expense for the regulated community; and maximizing efficient use of government expertise and resources. The EPA believes the approach finalized today best ensures that the CAA is implemented fairly, efficiently, and effectively in Indian country. See *Washington Department of Ecology,* 752 F.2d 1465 (9th Cir. 1985).

The EPA disagrees with commenters who assert that there are policy reasons that should compel EPA to allow States to implement the title V program over Indian country lands, including non-Indian-owned fee lands within Indian reservations. One of EPA's primary policy objectives is to avoid gaps in title V coverage. This objective is not served by allowing States that generally lack authority to regulate air sources in Indian country, including non-Indian lands, to issue permits that may not be enforceable under Federal law. In addition, EPA does not believe the Agency has the authority to approve a State program in Indian country unless the State can demonstrate that it has authority over Indian country sources.

The EPA's approach also advances the important policies of administrative clarity in the operation of the regulatory program, effective and efficient environmental management, and support of Tribal self-determination. Today's rule makes it clear that from the first day of the program in Indian country, EPA would be the relevant permitting authority for sources located in Indian country, until a part 70 program is explicitly approved for the area. Except in rare cases, sources would be spared the delay and confusion caused by States attempting to construct and support CAA jurisdictional demonstrations over Indian country. Further, EPA has sufficient resources to implement the program in Indian country. Today's rule also avoids checkerboarding of regulatory authority within reservations. As stated above, EPA believes that Congress intended that EPA take a territorial view of implementing air programs within reservations. The EPA believes that air quality planning for a checkerboarded area would be more difficult and that it would be inefficient if a Tribe and a State were to exercise piecemeal regulation over tracts of land within a reservation, possibly with similar reservation sources being subject to different substantive requirements. EPA's policy provides for coherent and consistent environmental regulation within reservations.

Today's rule also supports and preserves Tribal sovereignty through Federal implementation of the program until Tribes are delegated authority pursuant to the Tribal Authority Rule to regulate all air sources within their reservations. Consistent with EPA's Indian Policy, EPA generally will implement the program in Indian country until Tribal governments are willing and able to assume full responsibility for CAA programs. See EPA Indian Policy, reaffirmed by Administrator Browner on March 14, 1994.

Today's rulemaking will allow for a smooth transition to Tribal implementation of title V programs. Apart from the question of whether States could even demonstrate CAA jurisdiction in Indian country, if EPA were to allow States to administer the program within reservations until Tribal programs were approved, EPA would need to complete two rounds of notice and comment rulemaking before taking a third round of rulemaking to approve the Tribal program. The first would be to explicitly approve State programs as covering reservations, and the second would be to subsequently withdraw program approvals for the same areas. This approach would be unwieldy as well as inconsistent with the Agency's interpretation of the CAA. Further, EPA believes that there would be less conflict between States and Tribes that administer title V programs if there was not a period of State administration. The EPA, nevertheless, strongly encourages Tribal and State cooperation in the development of Tribal part 70 programs through sharing technical expertise as well as information about sources and air quality issues. With the Agency's increasing emphasis on regional solutions to air quality issues, EPA supports Tribal and State efforts to jointly plan air protection strategies. The EPA believes the most supportive environment for collaborative efforts is one in which Tribes and States are not adversaries on the issue of who has jurisdiction to administer the title V program.

The EPA understands the strong desire expressed by industry commenters to avoid having several regulating entities, e.g., EPA, a State, and a Tribe, seeking to assert regulatory authority over them. The EPA believes that Federal implementation of the title V program throughout Indian country will help provide certainty and clarity to regulated entities. While in some cases application of the Indian country standard may involve a detailed, case-specific analysis, the standard provides certainty. For example, Indian country clearly includes all lands within Indian reservations, including fee lands. The EPA believes that the vast majority of Indian country sources that are subject to the part 71 program are located within reservations. Therefore, it will be clear to most Indian country sources that they are subject to the part 71 program. In addition, there is a well-developed body of Federal case law on the Indian country standard, including case law on the status of reservations, dependent Indian communities, and allotments.

To provide additional certainty to regulated entities, EPA believes it is helpful to clarify the extent to which State title V programs have force in Indian country. The EPA makes clear today that the Agency interprets past approvals of State title V programs as not extending to Indian country unless that State has made an explicit demonstration of jurisdiction over Indian country, and EPA has explicitly approved the State's title V program for such area. This is consistent with Congress' requirement that EPA approve State and Tribal programs only where there is a demonstration of adequate authority. See CAA sections 502(b)(5)(A) and (E) and 40 CFR 70.4(b)(3).[3] Since States generally lack the authority to regulate air resources in Indian country, EPA does not believe it would be appropriate for the Agency to approve State CAA programs as covering Indian country where there has not been an explicit demonstration of adequate jurisdiction and where EPA has not explicitly indicated its intent to approve the State program for an area of Indian country. Thus, to the extent States or others may have interpreted past EPA approvals that were not based on explicit demonstrations of adequate authority and did not explicitly grant approval in Indian country, as approvals to operate part 70 programs in Indian country, EPA wishes to clarify any such misunderstanding.[4]

In State program approvals, EPA generally did not find that States had demonstrated authority to regulate sources in Indian country pursuant to part 70 programs. Although the language of program approvals on this issue varied, approvals of State programs typically excluded areas over which a Tribe has jurisdiction. Except where expressly noted, at the time EPA issued part 70 approvals, EPA did not find that the States whose programs were subject to the approvals had made an adequate showing of authority pursuant to CAA sections 502(b)(5)(A) and (E) to justify approval of their programs in Indian country.

[3] To obtain title V program approval, a State must demonstrate that it has adequate authority to issue and enforce permits that assure compliance by all sources required to have permits under title V with each applicable requirement under the CAA. See CAA sections 502(b)(5)(A) and (E); 40 CFR 70.4(b)(3). The program submission must include a legal opinion from the Attorney General from the State or the attorney for those State, local, or interstate air pollution control agencies that have independent counsel, stating that the laws of the State, locality, or interstate compact provide adequate authority to carry out all aspects of the program. This statement shall include citations to the specific statutes, administrative regulations, and where appropriate, judicial decisions that demonstrate adequate authority (40 CFR 70.4(b)(3)).

[4] On May 15, 1998, the State of Colorado Department of Law, Office of the Attorney General, submitted a document entitled ''Supplemental Attorney General Opinion—Title V Program'' to the Regional Administrator of EPA Region VIII. This document requests that EPA extend approval of Colorado's interim approved title V program (60 FR 4563, January 24, 1995) to cover non-member-owned sources located on fee lands within the exterior boundaries of the Southern Ute Reservation. Colorado asserts that its request is supported by Public Law 98–290. Colorado did not submit the request as a comment on the proposed revisions to part 71 that are the subject of today's rulemaking. The EPA will respond to Colorado's request in a separate proceeding in accordance with the part 70 provisions governing EPA review of submitted programs. Today's rulemaking does not constitute an EPA final action in response to Colorado's request and does not prejudge EPA's consideration of Colorado's request in any way.

In the 1997 proposal, EPA proposed to implement the program where there is a ''dispute'' as to whether a particular area is Indian country. However, EPA now believes the use of the term ''dispute'' may be misleading and inappropriate. For purposes of this rule, there may be, but need not be, a formal dispute, such as active litigation or other form of public disagreement, for EPA to consider the Indian country status of the area to be in question. Further, although it may be helpful for States and Tribes to submit information to EPA relative to their views, this information would not necessarily be dispositive as to EPA's judgment about whether the Indian country status of the area is in question. The EPA may be aware of questions regarding the area's status based on information from other sources such as the Department of the Interior (DOI) or other Federal agencies. Also, EPA emphasizes that EPA will not consider there to be a question about the status of areas that are clearly within the boundaries of an Indian reservation.

The EPA's decision to implement the program in areas for which EPA believes there is a question of whether the area is Indian country will help achieve a number of important objectives. Federal implementation in such areas will ensure no gap in title V coverage. If it is unclear whether a Tribe or a State has authority over an area, EPA can ensure that the title V program has legal effect by implementing the program federally. *See* Underground Injection Control Programs for Certain Indian Lands, Final Rule, 53 FR 43096, 43097 (Oct. 25, 1988) (observing that where there is a dispute, both States and Tribes may disagree with each other's assertions of jurisdiction, thereby raising doubts as to whether either has enforcement authority over the area's sources).

The EPA notes that disputes and uncertainty could prevent both the State and Tribe from effectively implementing the CAA title V program. Where a State and Tribe assert jurisdiction over an area whose Indian country status EPA believes is in question (and EPA has not resolved the question and has not explicitly approved a part 70 program as applying in the area), EPA would not view either the State or the Tribe as having satisfied the CAA section 502(b)(5) requirements to have adequate authority to issue permits that assure compliance with all CAA applicable requirements, and enforce such permits, with respect to the area. See 42 U.S.C. 7661a(b)(5)(A)–(E). Only when the State or Tribe prevails on the Indian country question would EPA then be able to conclude that the section 502(b)(5) requirements have been met for the area. Until that time, the absence of an approved part 70 program in the area necessitates implementation of part 71. By federally implementing the title V program in areas for which EPA believes the Indian country status is in question, EPA can help avoid jurisdictional disputes that might hinder effective implementation of the CAA. Furthermore, Federal implementation in such areas will help provide the regulated community with certainty as to which entity (EPA, the State or the Tribe) will implement the title V program.

In addition, as discussed in detail below, EPA is providing a mechanism under this rule that will allow regulated entities to formally seek a determination from EPA as to whether or not they are covered by the part 71 program. This mechanism will help provide certainty and minimize delay and expense for regulated entities.

Finally, EPA recognizes that, compared to States, the Agency has different expertise, and generally expends fewer resources for direct implementation of the CAA than for establishing national programs and conducting oversight. However, EPA notes that it has substantial experience with developing title V regulations and nationally-applicable standards, issuing Prevention of Significant Deterioration (PSD) and acid rain permits to sources in Indian country, providing oversight of State title V and other CAA programs, and reviewing State-issued title V permits. The EPA has the expertise and is committed to ensuring that the CAA is fully implemented in Indian country. In the preamble to the final Tribal Authority Rule, EPA outlines its strategy for full implementation of the CAA in Indian country. A short summary of the strategy is included in section III.B below.

The EPA notes that the approach finalized today is not intended to preclude cooperative approaches between States and Tribes. To the contrary, Tribes and States are permitted and encouraged to cooperate in the implementation of the title V program, including by sharing financial and technical resources and expertise.

B. Effect of State Law

Several commenters request that EPA clarify the effect of the part 71 program on permits issued under State law. In general, State and industry commenters argue that the Federal operating permits program should not alter either the authority of States to regulate non-Indian sources operating on fee lands within reservations or the validity of permits issued to sources in Indian country under State law. Several commenters ask EPA to agree that a facility located in Indian country operating under a permit issued by a State agency which purports to limit the facility's potential to emit (PTE) to below the part 71 applicability emission thresholds is a ''synthetic minor'' source that does not need to obtain a Federal operating permit.

As EPA stated in the 1997 proposal, EPA believes that CAA section 301(d)(2) clearly reflects Congress' decision to grant to eligible Tribes the authority to administer programs over all air resources within the exterior boundaries of a reservation and within areas outside of the reservation that are within a Tribe's jurisdiction. Until a Tribal program is approved, EPA believes that it should manage air quality in those areas for the reasons discussed in section III.A above. Consistent with this preference and the territorial approach favored by Congress, it follows that under EPA's approach to implementation of the CAA, State or local programs do not affect the applicability of Federal Clean Air Act requirements to sources in Indian country unless the programs are explicitly approved by EPA under the CAA as applying within Indian country. Where such approval is lacking, EPA will implement the CAA in Indian country except where a Tribal program is approved. It is EPA's position that unless EPA has explicitly approved the program as applying in Indian country, State or local permits for sources in Indian country (and limitations in such permits) are not effective for purposes of limiting PTE of sources such that they are not covered by the part 71 program, or for any other purpose under the CAA. The EPA is not taking a position in this rulemaking on whether State laws regulating air resources have effect in Indian country outside of the context of the CAA.

The EPA also notes that its decisions on whether States have demonstrated authority in Indian country have already been made in approvals of individual State part 70 programs. Where States have not demonstrated authority in Indian country, EPA has limited the scope of its approval of the State program accordingly. The fact that a source has applied for or obtained a permit from a State or local program that has not been explicitly recognized by EPA as extending into Indian country but which purports to limit the PTE of the source does not alter the requirement under part 71 that the source apply to EPA for a Federal operating permit. The EPA expects all sources that meet the applicability

criteria of part 71 to apply to the appropriate EPA Regional Office for a Federal operating permit.

Sources located in Indian country are already subject to applicable Federal CAA programs, such as the PSD program, New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAP) issued under sections 111, 112, and 129 of the CAA, the acid rain program under title IV of the CAA, and requirements of title VI of the CAA. Nonetheless, EPA is aware that in the short term, some of the estimated 100 part 71 sources in Indian country will not be subject to substantive requirements that control their emissions. The EPA has a number of efforts underway on dual tracks to remedy this situation as part of the Agency's initiative to develop a comprehensive strategy for implementing the CAA in Indian country. This approach relies both on the development of Tribal air programs that will establish substantive control requirements and on EPA's direct implementation of new Federal requirements.

For the first track, EPA has been providing technical and financial assistance to Tribal governments to build Tribal capacity to run EPA-approved CAA permits programs and other CAA programs. For example, the Agency is working with both the Shoshone-Bannock and the Navajo Tribes to address pollution control of major sources on their reservations.

In terms of Federal implementation, EPA will establish priorities for its direct Federal implementation activities by addressing as its highest priority the most serious threats to public health and the environment in Indian country that are not otherwise being adequately addressed.

The EPA is in the process of developing a regulatory program for preconstruction review of minor sources that will establish, where appropriate, control requirements for sources that would be incorporated into part 71 permits. EPA anticipates that the program will offer sources located in Indian country the opportunity to accept enforceable limits on their PTE, and possibly thereby avoid the requirement to obtain a part 71 operating permit or a pre-construction permit under the PSD program. The EPA is also working on nationally applicable regulations for major source preconstruction permitting in non-attainment areas that would apply to sources in Indian country.

To establish additional applicable, federally-enforceable emission limits, the EPA Regional Offices will promulgate Federal implementation plans that will establish Federal requirements for sources in specific areas, where appropriate. The Regional Offices will carry out this process in a prioritized manner without unreasonable delay, beginning with facilities that pose the greatest threat to public health or the environment and in instances where the Tribal government raises important considerations.

Further, EPA plans to extend its January 25, 1995 transition policy for PTE limits to sources located in Indian country where they maintain emissions of less than 50 percent of all applicable major source emissions thresholds. Under this policy, sources located in Indian country that meet the criteria and record keeping requirements outlined in the policy memorandum would not be considered major sources for purposes of the part 71 program for an interim period until EPA or a Tribe adopts and implements a mechanism that can be used to limit a source's PTE. This policy will ensure that early implementation of the part 71 program can focus attention on creating high-quality permits and Federal implementation plans for higher-emitting part 71 major sources.

C. Determining Whether Sources Are Subject to the Federal Program

The discussion below explains how EPA will decide in particular cases whether sources are located in Indian country and communicate to sources that they are expected to submit permit applications to their appropriate EPA Regional Office. The approach adopted in today's rule is essentially the one contained in the March 1997 proposal. In addition, today's rule establishes procedures for sources to obtain individual determinations from EPA as to whether they are subject to the program. Like the permitting procedures themselves, however, these procedures are not intended to provide a forum in which the Agency is required to resolve all questions about whether an area is Indian country. Moreover, a source owner or operator's decision to request that the Agency make an applicability determination will not stay the effectiveness of the part 71 program for the source.

1. The 1995 Proposal

Under the 1995 proposal, 90 days prior to the effective date of any Federal part 71 program in a ''Tribal area,'' EPA would have notified interested governmental entities of the proposed geographic scope of the Federal program. Where the program would solely address sources within a reservation, the notice would have specified the boundaries of the reservation. But where the program would cover off-reservation areas, the notice would have relied upon the Tribe's basis for asserting jurisdiction. Governmental entities would have had 15 days in which to submit written comments to EPA regarding any disagreement concerning the boundaries of the reservation, with up to an additional 15 days to comment regarding disagreements about off-reservation areas over which the Tribe had claimed jurisdiction. The EPA would then have decided the scope of the Tribe's jurisdiction. Where disputes were not resolved, EPA would have implemented part 71 in areas that were not subject to competing jurisdictional claims. Final determinations of the scope of Tribal jurisdiction would have been published in the **Federal Register** at least 30 days prior to the effective date of the part 71 program in the ''Tribal area.'' See proposed 71.4(b)(1)(i)–(vi), 60 FR 20804, 20831–20832 (April 27, 1995). These provisions were not adopted in the July 1996 final rule which announced that EPA would revisit in a subsequent notice the issue of how EPA would make decisions regarding whether sources are located in Indian country and are subject to the program.

2. The 1997 Proposal

The 1997 proposal, in order to be more consistent with EPA's general policy on implementing environmental programs in Indian country, proposed that EPA would not conduct area-specific rulemaking procedures to assess the boundaries of programs in Indian country. (See, e.g., 40 CFR 144.3, 147.60(a) regarding EPA implementation of UIC programs on ''Indian lands,'' defined equivalently to ''Indian country.'') Instead, EPA's action to establish part 71 in Indian country would occur through today's generally applicable national rulemaking. Specific ''boundary'' questions relating to applicability of the program to particular sources would be addressed through a less formal consultation process involving, as appropriate, DOI, Tribes, States and relevant stakeholders. Rather than requiring the Agency to notify interested governmental entities of the proposed geographic scope of programs, EPA would make case-specific determinations on whether particular sources are in Indian country. Prior to the effective date of the part 71 program, EPA would undertake similar kinds of outreach efforts as those taken by States and local governments under part 70 programs, notifying sources that

the Agency believed were subject to the program. In addition, under section 71.4(g), EPA would publish an informational notice of the effective date of the part 71 program for sources in Indian country. Finally, EPA proposed that in cases of disagreement about whether an area is Indian country, EPA would administer part 71 in the area pending resolution of the area's Indian country status, and would, to the extent possible, resolve such issues in the context of permitting sources. See 62 FR 13748, 13750–13751 (March 21, 1997).

3. Comments on the 1997 Proposal

The EPA received numerous comments regarding the way the 1997 proposal addressed how EPA would determine whether sources are subject to the Federal program. In general, State and local government regulatory agencies and industry commenters favor requiring individual notice and comment rulemaking procedures to establish the geographic boundaries of each area where the Federal program applies, and prefer the approach discussed in the 1995 proposal or procedures similar to it. These commenters argue that the boundaries of Federal programs should be set through case-by-case notice and comment procedures and ascertained with geographical certainty before establishing programs, in order to avoid imposing inappropriate costs and undermining clarity and certainty for sources. Some argue that EPA's planned reliance on Bureau of Indian Affairs (BIA) maps is misplaced due to the alleged inaccuracy of this information. These commenters suggest that the determination of geographic boundaries is a contested, fact-specific inquiry that requires notification of appropriate governmental entities, sources and the relevant public. They assert that the rule should provide for delay of implementation until such questions are resolved. Without this, the commenters argue, EPA would produce poor jurisdictional decisions and frustrate title V's goals of clarity and certainty for sources.

These commenters also believe that at the time EPA notifies sources that they are subject to part 71, EPA should also notify relevant States who may already be attempting to regulate these sources. They assert that because of the perceived ambiguity concerning the scope of Tribal or EPA authority under the CAA, many States may be implementing title V in areas where EPA would consider them not to have jurisdiction. This means that States need to be aware of jurisdictional issues so that they can work with EPA and Tribes to resolve jurisdictional questions without leaving the regulated sources caught in uncertainty and having unintended fiscal impacts on States to which sources have paid title V fees.

Several State and industry commenters believe that EPA should return to the 1995 proposed rule's approach of requiring Tribes to demonstrate jurisdiction before EPA would implement part 71 in off-reservation areas. These commenters argue that the only clear boundaries in Indian country are recognized reservation boundaries. They also contend that if Tribes claim jurisdiction beyond the reservation, they must provide the factual and legal basis for their inherent authority over such resources with clarity and precision before the Tribe, and hence EPA, can regulate them. One such commenter argues that this approach is required by the language of CAA section 301(d)(2)(B). Another argues that the shift of jurisdictional proof to States regarding non-reservation trust lands results in EPA presuming jurisdiction where none may exist. Another commenter asserts that this result, as opposed to the approach of the 1995 proposal, is inappropriate in light of the long history of competing jurisdictional claims concerning current and former Indian lands.

Some commenters believe that placing the burden on the source to assess whether it is in Indian country is unfair, given the uncertainties and the costs of applying for permits, and that it will therefore be difficult for sources to determine whether they are subject to the part 71 program or the corresponding State part 70 program. Other commenters argue that sources who mistakenly apply for State part 70 permits, rather than Federal part 71 permits, should not be subject to liability; furthermore, their part 70 permits should be deemed valid part 71 permits until the time for permit renewal, at least where EPA's initial determinations of geographic borders are later found to be incorrect.

As discussed in Section III.A above, many State and industry commenters contend that EPA should run part 71 in areas where the Indian country status is in question only if the State has not attempted to apply its part 70 program there. These commenters argue that this would allow State part 70 programs to be used to resolve jurisdictional questions in the permitting process, would avoid situations where permitting responsibility shifts back to the State if the State prevails in its jurisdictional claim, and would leave the ''status quo'' in place until a Tribe successfully demonstrates jurisdiction in the area. Moreover, these commenters assert that the regulation should specify the guidelines EPA will use to review and settle questions regarding an area's Indian country status. Due to EPA's trust responsibility toward Indian Tribes, these commenters believe that EPA may not be able to act as an impartial judge in resolving jurisdictional questions. The commenters argue that since EPA has limited expertise in defining the scope of Indian country, the method EPA develops should afford ample time for States and sources to receive notice and present all necessary information before the Agency makes a jurisdictional decision.

Finally, Tribal commenters generally support the 1997 proposal and suggest that States and sources should not have difficulty in discerning the boundaries of Indian reservations, which are delineated on updated BIA maps. Tribes also suggest that EPA could use Tribes to give notice to sources on reservations, and that this, in combination with publication of a general notice of the effectiveness of part 71 in Indian country pursuant to § 71.4(g), would provide sufficient notice to sources that they need to submit Federal permit applications to EPA.

4. EPA's Responses and Description of Final Rule

In most cases, determining whether sources are located within Indian country will be straightforward and non-controversial. That is, in the majority of cases EPA and sources will be able to easily determine whether a source is located within the exterior boundaries of a reservation or on land that a court or DOI has said is Indian country (which could include dependent Indian communities). These assessments can be verified through consultation with DOI and will be informed by data and materials received from States, surveys, DOI and Tribes. In the rarer, more complex factual cases such as those involving pending diminishment issues and dependent Indian community issues, EPA in appropriate cases will work with DOI, Tribes and stakeholders (e.g., States, local governments, sources, and environmental organizations) to assess whether sources are located in Indian country or areas for which EPA believes the Indian country status is in question. After EPA has reviewed the relevant materials, the Agency will send letters to sources that EPA believes are located in such areas or in Indian country, indicating that they are expected to

submit a Federal title V permit application within one year of the program's effective date (or some earlier time as established by the EPA Regional Office). Copies of these notices will be sent to interested State, local and Tribal governments. However, if EPA fails to notify some sources that are subject to the program, note that it is the source's responsibility to ascertain whether it is subject to part 71 and submit any required permit application. The addition in today's rule of provisions allowing sources to request that EPA answer applicability questions is designed to make it easier for sources to meet this responsibility and essentially can be used to partly shift the burden of accurately determining program applicability from the source to EPA.

As a result of today's national rulemaking establishing the part 71 program throughout Indian country, and in light of the process discussed above, EPA has decided that it would be administratively unnecessary and infeasible to conduct additional iterative notice and comment rulemakings for each case in which EPA is discerning whether particular sources or areas fall within the geographic boundaries of Indian country. Under other Federal environmental programs, the Agency has taken the same basic approach as is being adopted today and has not made individual determinations of the boundaries of Indian country through case-specific rulemaking actions, beyond generally identifying the area of Indian country in which the Federal program was being established. See, e.g., Underground Injection Programs for Certain Indian Lands, Final Rule, 53 FR 43096 (Oct. 25, 1988).

Since EPA takes the position that State and local part 70 programs do not, for CAA purposes, extend into Indian country unless the Agency has explicitly approved the programs as extending into Indian country, EPA does not generally expect that sources located in Indian country will be confused about whether they are covered by a State part 70 or EPA part 71 Clean Air Act program. This is especially true for sources located in Indian country that are already covered by EPA-administered PSD plans under title I or acid rain programs under title IV of the CAA. States should be fully aware of whether EPA has explicitly approved their part 70 programs as applying in Indian country.

In addition, EPA is adding certain provisions to today's final rule that will make it easier for sources to learn whether they are subject to the Federal program, and that may reduce the expense of the program for some sources that have paid permit fees to a State agency. Finally, in response to the comments, EPA will notify relevant State, local, and Tribal governments at the same time the Agency notifies individual sources that they are subject to the Federal program.

The EPA does not agree with State and industry commenters that the 1995 proposal took the correct approach of requiring Tribes to demonstrate jurisdiction in off-reservation areas before EPA's Federal jurisdiction would attach. First, as discussed in section III.A above, EPA's authority to administer the part 71 program is based on EPA's broad authority to protect air quality within Indian country, and does not depend on a jurisdictional showing by a Tribe. In addition, if EPA were to administer a part 71 program only where Tribes come to EPA to demonstrate jurisdiction, there would be some non-reservation areas of Indian country that lack a permitting authority with jurisdiction to implement a title V program. The EPA's view is that no State CAA programs apply in Indian country unless explicitly approved as such, and that a State attempt to regulate under color of the CAA in non-reservation Indian country during this temporal ''gap'' would result in State-issued permits that could not be enforced under the CAA. Only by EPA assuming responsibility to issue permits in these situations can the gap be filled and national title V coverage be achieved. Finally, EPA believes it would be an unnecessary burden on Tribes to require that they submit jurisdictional demonstrations over off-reservation areas in order to establish EPA's Federal jurisdiction, which can be more easily established through today's rule.

The EPA appreciates that some sources, especially those located in areas over which States have attempted to exert regulatory authority, may feel burdened by the duty to correctly identify whether they are subject to the Federal program. However, as discussed in section III.A above, EPA believes that the most appropriate approach to take in order to ensure nationwide coverage of title V is to apply the part 71 program in all areas except where a State or Tribal program has been explicitly approved.

In response to industry comments and in order to minimize uncertainty and burden for sources, EPA is adding in today's final rule regulatory provisions that will allow sources that are uncertain regarding program applicability to submit requests to the Agency for applicability determinations. This process would be similar to those that exist under other CAA programs, such as NSPS and NESHAP programs under sections 111 and 112, and the acid rain program under title IV. See, e.g., 40 CFR 60.5, 61.06, 72.6(c). Under today's rule, any source operator or owner who is uncertain regarding coverage of part 71 for any reason (including, for example, uncertainty regarding whether the source is a major source) could request in writing prior to the issuance of a part 71 permit that EPA make an applicability determination. The request must include an identification of the source and relevant and appropriate facts about the source and must be certified in accordance with section 71.5(d). Sources should include all information that they wish to be part of the record for EPA's applicability determination. This could include information provided by State, local, and Tribal governments.

With respect to issues concerning whether a source is in Indian country or an area for which EPA believes the Indian country status is in question, EPA would evaluate the source's request, along with other relevant information that EPA has assembled for the applicability determination record. For example, EPA may consider treaties, maps, and information submitted by State, local, and Tribal governments. Upon request, EPA would make the record available to Tribes, States, and relevant stakeholders prior to making the applicability determination. The EPA would issue a written determination stating either that the source is subject to the part 71 program as of the program's effective date because it is located in Indian country or an area for which EPA believes the Indian country status is in question, or that the source is not located in an area covered by the part 71 program, and thus may be subject to the State or local program. The EPA believes that this process is consistent with the title V goals of providing clarity and certainty for sources and represents a practical method for addressing uncertainties regarding boundaries of Indian country. It also affords opportunities for sources and other stakeholders to get their views and information before the Agency.

The EPA stresses that any sources that are uncertain regarding part 71 program applicability should submit timely permit applications since submission of a request for an applicability determination will not stay the effectiveness of part 71 with respect to the source. In order to obtain the ''application shield'' under CAA section 503(d) that allows a source to continue to operate after the effective date of the Federal title V program, timely

submission of a Federal permit application is required.

Moreover, as discussed in detail elsewhere in today's notice, EPA is taking another measure in response to industry comments to minimize the burden on sources located in areas for which EPA believes the Indian country status is in question. For those sources, EPA may reduce the Federal title V permitting fee where the sources have paid fees to State permitting authorities that have asserted CAA regulatory authority over them. This approach will ensure that sources in such areas will be issued federally enforceable title V permits, without financially overburdening sources that have yielded to State attempts to assert jurisdiction under color of a part 70 program.

IV. Changes From the Proposed Rules and the 1996 Final Rule

Today's final rule is similar to the 1997 proposal in most respects. Instances in which the final rule departs from the 1995 and the 1997 proposals and the 1996 final rule are noted below.

A. Geographic Area Subject to the Part 71 Program

The EPA today adds a definition of the term ''Indian country'' as it is defined in 18 U.S.C. § 1151. The EPA notes that although the definition of Indian country appears in a criminal code, it has been extended to civil judicial and regulatory jurisdiction (*DeCoteau* v. *District County Court*, 420 U.S. 425, 427 n. 2 (1975). *See also* 40 CFR 144.3).

In addition, EPA is not adopting the proposed definition of the term ''Tribal area'' (from the 1995 proposal) because the term is not relevant to the approach taken in today's rulemaking for defining the geographical area for which EPA will administer a part 71 program. Accordingly, EPA revised several regulatory provisions that included the undefined term ''Tribal area,'' including the definition of ''Affected State'' in § 71.2, § 71.4(a), § 71.4(b), § 71.4(b)(2)–(3), § 71.4(f), § 71.4(h)–(j), § 71.8(a), and § 71.8(d), and replaced that term with language to reflect the program's applicability in Indian country.

Also, with respect to section 71.8(d) and the definition of ''Affected State,'' EPA is adopting language consistent with CAA section 505(a)(2) and the 1996 final rule in lieu of the language in the 1997 proposal that misstated the criteria for States and Tribes to receive notices. The permitting authority will be required to provide notices of draft permits to Tribes pursuant to § 71.8(d) and to affected States if (1) their air quality may be affected by the permitting action and they are contiguous to the jurisdiction in which the part 71 permit is proposed or (2) they are located within 50 miles of the permitted source.

In addition, EPA has added language to section 71.4(b) that clarifies that for purposes of administering the part 71 program, EPA will treat areas for which EPA believes the Indian country status is in question as Indian country.

Proposed § 71.4(b)(1) from the 1995 proposal that referred to Tribal assertion of jurisdiction is not adopted since a Tribe's assertion of jurisdiction is not a relevant consideration under today's rulemaking. Instead, pursuant to § 71.4(b), EPA will administer the part 71 program within Indian country even where the Tribe has not demonstrated to EPA its jurisdiction over the area.

Also, as discussed in section III.C of today's notice, provisions from the 1995 proposal that would have required EPA to notify State, local, and Tribal governmental entities of the proposed geographic boundaries of the program are inappropriate and have not been adopted. Consistent with the Agency's policy with respect to administering environmental programs in Indian country, EPA will not solicit comment on the boundaries of the program through subsequent rounds of rulemaking. See, e.g., 40 CFR 144.3, 147.60(a) (EPA administers Underground Injection Control program on ''Indian lands,'' defined equivalent to ''Indian country''). Rather, EPA will determine whether specific sources are within Indian country or areas for which EPA believes the Indian country status is in question and are therefore subject to the part 71 program. The EPA will provide notices to sources informing them of the deadline to submit part 71 permit applications and will send copies of the notices to State, local and Tribal governments.

B. Applicability Determinations

As discussed in section III.C of today's notice, in response to industry concerns that it may be difficult to determine whether a source is located in Indian country, the final rule adopts a provision, § 71.3(e), that provides that a source may formally request that EPA determine whether or not the source is subject to the part 71 program.

C. Permit Fee Relief

Today's rule adds a section that authorizes EPA to reduce part 71 fees for sources that are located in areas for which EPA believes the Indian country status is in question and that have paid part 70 fees to a State or local permitting authority that has attempted to apply its part 70 program in the area. A commenter expressed concern about the fiscal impact on State part 70 programs that may result when sources that have paid fees to the State become subject to the part 71 program. In cases where it is not certain that a source is located in Indian country, the State may be reluctant to discontinue regulating and charging fees to the source. Industry commenters also generally stated that where there is disagreement regarding whether a source is subject to Federal jurisdiction, it would be burdensome for the source to comply with the requirements of two permit programs.

The EPA's primary goal in regulating sources in areas for which EPA believes the Indian country status is in question is to make sure that all title V sources are covered by permits enforceable under the CAA. The EPA believes that issuing part 71 permits to sources in such areas is the only way to assure that all title V sources are subject to enforceable permit terms, given that State permit regulations are generally unenforceable in Indian country under the CAA. However, EPA agrees with the commenters that sources should be afforded some relief from the financial hardship that may result while the Indian country status of the area is unclear, particularly since relieving sources of some of this burden would have no adverse environmental impact provided the source is paying an adequate aggregate title V fee. Where the Indian country status, in EPA's judgement, is in question, EPA may reduce the part 71 permit fee under § 71.9(p), upon application of the source. In implementing this section, EPA may reduce the fee the source would have owed under § 71.9(c) by the amount of permit fees paid to a State or local agency. The fee reduction will cease if the area is later determined to be Indian country.

D. Duty to Administer the Part 71 Program

Today EPA is adopting language in § 71.4(b) to clarify that EPA will (instead of ''may'') administer the part 71 program in Indian country unless a part 70 program has been given full or interim approval. The 1995 proposal and the final rule had used the phrase ''may administer.'' As explained in the 1997 proposal, EPA had intended this language to authorize early implementation of the part 71 program (in advance of the November 15, 1997 default effective date for the program) and did not mean to imply that the regulation would allow EPA to choose to not administer the program in Indian country.

E. Publication of Notice of Final Permitting Actions

Today's rulemaking includes a technical amendment to § 71.11 that adds a provision (§ 71.11(l)(7)) requiring EPA to publish notice of any final permitting action regarding a part 71 permit in the **Federal Register**. This amendment is to make the rule more consistent with the 40 CFR part 124 requirements that apply to EPA issuance of PSD permits and to implement the provisions of CAA section 307(b)(1). The time period in which petitioners can file petitions for review of final permits in the Court of Appeals will run for 60 days from the date of publication of the notice of final permit action.

This amendment is being made without first being proposed because it is technical in nature and imposes no new requirements on sources and because it is in the public interest to adopt this correction to part 71 more quickly than could be achieved by using notice and comment procedures, which in this case are impracticable, unnecessary, and contrary to the public interest.

F. Technical Amendment to § 71.4(f)

The EPA intended that this provision would allow EPA the flexibility to meld portions of a State or Tribal permit program with provisions of part 71 to create a part 71 program that fits the needs of the area for which it is being administered, regardless of whether the State or Tribal program had gained EPA approval. However, the provision as finalized in the 1996 final rule could be read to not allow this result. Strictly read, it allows EPA to use portions of a ''State or Tribal program'' (defined in § 71.2 to mean EPA-approved programs) in combination with provisions of part 71 to administer a Federal program. To achieve its intended result, EPA is revising the regulatory language to refer to a ''State or Tribal permit program.'' By avoiding the defined term ''State or Tribal program,'' the provision as amended by today's rulemaking authorizes EPA to develop a part 71 program by combining either an approved or unapproved permit program with provisions of part 71.

This amendment is being made without first being proposed because it is technical in nature and imposes no new requirements on sources and because it is in the public interest to adopt this correction to part 71 more quickly than could be achieved by using notice and comment procedures, which in this case are impracticable, unnecessary, and contrary to the public interest.

G. Effective Date of Program

Because today's rulemaking was not finalized prior to November 15, 1997 as EPA had intended, § 71.4(b)(2) is amended to provide that the effective date of a part 71 program in Indian country is 30 days following the publication of today's rulemaking. For similar reasons, language in § 71.4(b)(3) which allowed EPA to adopt an earlier effective date for the program than November 15, 1997 has been deleted. Section 71.4(b)(4) has been renumbered as § 71.4(b)(3).

This amendment is being made without first being proposed because it is technical in nature and imposes no new requirements on sources and because it is in the public interest to adopt this correction to part 71 more quickly than could be achieved by using notice and comment procedures, which in this case are impracticable, unnecessary, and contrary to the public interest.

V. Administrative Requirements

A. Docket

The docket for this regulatory action is A–93–51. The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this rulemaking.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan program or the rights and obligation of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant'' regulatory action because it does not raise any of the issues associated with ''significant'' regulatory actions. The rule will have a negligible effect on the economy and will not create any inconsistencies with other actions by other agencies, alter any budgetary impacts, or raise any novel legal or policy issues. For these reasons, this action was not submitted to OMB for review.

C. Regulatory Flexibility

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities. In developing the original part 70 regulations and the proposed revisions to part 70, the Agency determined that they would not have a significant economic impact on a substantial number of small entities. See 57 FR 32250, 32294 (July 21, 1992), and 60 FR 45530, 45563 (August 31, 1995). Similarly, the same conclusion was reached in an initial regulatory flexibility analysis performed in support of the 1996 part 71 rulemaking. See 61 FR 34202, 34227 (July 1, 1996). A small subset of sources subject to the part 71 rule are affected by today's rulemaking.

The prior screening analyses for the part 70 and part 71 rules were done on a nationwide basis without regard to whether sources were located within Indian country and are, therefore, applicable to sources in Indian country. Accordingly, EPA believes that the screening analyses are valid for purposes of today's final rule. And since the screening analyses for the prior rules found that the part 70 and 71 rules as a whole would not have a significant impact on a substantial number of small entities, today's rule, which will affect a much smaller number of entities than affected by the earlier rules, also will not have a significant impact on a substantial number of small entities. The reasons for this conclusion are discussed in more detail below.

At this time, there are very few nonmajor sources that are required by part 71 to obtain an operating permit. The Agency has also issued several policy memoranda explaining or providing mechanisms for sources to become ''synthetic minors'' whereby the source is recognized for not emitting pollutants in major quantities. The EPA plans to extend its January 25, 1995

transition policy for PTE limits to sources located in Indian country where they maintain emissions of less than 50 percent of all applicable major source emissions thresholds. The sources covered by the policy thereby avoid the requirement to obtain a part 71 permit.

Because of the deferral of permitting requirements for nearly all nonmajor sources, today's rulemaking would affect only a small number of sources. Although firm figures on the number of title V sources in Indian country are not available, preliminary estimates suggest that there may be only approximately 100 major sources and 450 nonmajor sources (with permitting requirements deferred for nearly all nonmajor sources).

The EPA believes that four Tribal governments may own sources that could be subject to today's rule and that consequently the rule would at most affect four of the more than 500 federally recognized Tribal governments or fewer than 1 percent of those governments. The EPA estimates that the compliance cost for sources subject to this rule is $18,425 per source or $73,700 for the four sources owned by Tribal governments.

Consequently, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0336. A copy of the Information Collection Request Document may be obtained from Sandy Farmer, OPPE Regulatory Information Division (2137), U.S. Environmental Protection Agency, 401 M Street, S.W., DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them.

The information is planned to be collected to enable EPA to carry out its obligations under the Act to determine which sources in Indian country are subject to the Federal Operating Permits Program and what requirements should be included in permits for sources subject to the program. Responses to the collection of information will be mandatory under section 71.5(a) which requires owners or operators of sources subject to the program to submit a timely and complete permit application, and under sections 71.6(a) and (c) which require that permits include requirements related to record keeping and reporting. As provided in 42 U.S.C. 7661(e), sources may assert a business confidentiality claim for the information collected under CAA section 114(c).

Today's rulemaking will impose information collection request requirements on approximately 100 sources in Indian country. The EPA believes that four of these sources may be owned or operated by Tribal governments. On a per source basis, the burden will be identical to the burden for sources currently subject to part 71 requirements. In the Information Collection Request (ICR) document for the July 1996 final part 71 rule (ICR Number 1713.02), EPA estimates that the annual burden per source is 329 hours, and the annual burden to the Federal government is 243 hours per source. Therefore, the impact of today's rulemaking will be that sources will incur an additional 32,900 burden hours per year, and EPA will incur an additional 24,300 burden hours per year. The total annualized cost will be $18,425 per source or $1,842,500. Of this amount, the total annualized cost for Tribal governments would be $73,700.

Today's rule imposes no burden on State or local governments and no burden on Tribal agencies, except those that happen to own or operate sources subject to this rule as noted above. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

E. Unfunded Mandates Reform Act

Today's action imposes no costs on State or local governments and no costs on Tribal governments, except those that happen to own or operate sources that are subject to this rule, as noted below. This rule establishes the Agency's approach to issuing permits to sources in Indian country and eliminates the proposed requirement that Indian Tribes establish their jurisdiction prior to EPA administering the Federal operating permits program in Indian country.

The EPA has estimated in the ICR document that the Federal operating permits program rule promulgated in July 1996 would cost the private sector $37.9 million per year. See 61 FR 34202, 34228 (July 1, 1996). In the ICR, EPA estimates costs based on sources that would be subject to part 71 permitting requirements in eight States but overestimates the number of these sources for purposes of simplifying the analysis. See 61 FR 34202, 34227 (July 1, 1996). The overestimate of the number of sources is nearly as large as the number of new sources covered by today's rule. Consequently, EPA believes today's rule would increase the direct cost of the part 71 rule for industry to $38.3 million. This estimate is based on the average cost of compliance per source and the number of sources in Indian country that were not accounted for in the original estimate.

The EPA believes that four Tribal governments may own or operate sources that could be subject to today's rule. The EPA estimates the compliance cost for these governments would be $18,425 per source or $73,700 for the four sources owned by Tribal governments.

The EPA has determined that today's action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector, in any 1 year. Therefore, the Agency concludes that it is not required by section 202 of the Unfunded Mandates Reform Act of 1995 to provide a written statement to accompany this regulatory action.

F. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal**

Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

G. Executive Order 13045

Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1977) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 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 final rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866 and because it does not involve decisions based on environmental health risks or safety risks.

H. Executive Order 12875: Enhancing Intergovernmental Partnership

Under Executive Order 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 or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to 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, 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 unfunded mandates.''

The EPA has concluded that this rule will create a mandate on tribal governments that happen to own or operate sources that are covered by the rule and that the Federal government will not provide the funds necessary to pay the direct costs incurred by such Tribal governments in complying with the mandate. The EPA believes that there are just four sources owned by Tribal governments that will be subject to this rule and that must submit permit applications and obtain part 71 permits. In developing this rule, EPA consulted with Tribal governments to enable them to provide meaningful and timely input in the development of this rule. Prior to the publication of the 1995 proposal, EPA shared a summary of the draft proposal and solicited input from attendees at a national Tribal environmental conference, as well as from approximately 300 Tribal leaders. The EPA mailed the 1995 and 1997 proposals and fact sheets to Tribal leaders, encouraging Tribal comment on the proposals. In addition, EPA discussed the proposed rulemaking and sought input from EPA's Tribal Operations Committee, composed of Tribal leaders as well as EPA managers.

Tribes were generally very supportive of the rule and EPA's interpretation of the CAA on the issues of Federal authority and Tribal authority to regulate air quality in Indian country. The issues raised by Tribal commenters did not relate to the mandate imposed by this rule on Tribal governments that own or operate sources subject to the rule. The major concerns expressed by Tribes related to the need for technical assistance to develop their own permit programs and the need to receive notice of permitting actions that affect Tribal air quality. Tribes requested that EPA work directly with Indian tribal governments in a government-to-government relationship in establishing the scope of and administering the program. Other concerns were related to the effect of the rule on Tribal sovereignty and economic development.

The EPA continues to provide technical assistance and training for Tribes to develop their own programs and is committed to involving Tribes in the administration of the Federal program on a government-to-government basis until Tribes have developed their own operating permit programs. The EPA believes that the rule's approach to jurisdictional issues is supportive of Tribal sovereignty and that the rule is necessary in order to protect air quality in Indian country, absent Tribal permits programs.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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 or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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.''

The EPA believes that four Tribal governments may own sources that could be subject to today's rule and that consequently the rule would at most affect four of the more than 500 federally recognized Tribal governments or fewer than 1 percent of those governments. The EPA estimates that the compliance cost for sources subject to this rule is $18,425 per source or $73,700 for the four sources owned by Tribal governments. The EPA therefore concludes that this rule does not impose substantial direct compliance costs on communities of Tribal governments. Notwithstanding, EPA has taken numerous steps to involve representatives of Tribal governments in the development of this rule. The EPA's consultation, the nature of the governments' concerns, and EPA's position supporting the need for this rule are discussed above in the preamble section that addresses compliance with Executive Order 12875.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American

Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

This action does not involve any new technical standards or the incorporation by reference of existing technical standards. Therefore, consideration of voluntary consensus standards is not relevant to this action.

List of Subjects in 40 CFR Part 71

Environmental protection, Air pollution, Indian Tribes, Operating permits.

Dated: February 8, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 71—[AMENDED]

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

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

Subpart A—[Amended]

2. Section 71.2 is amended by revising paragraphs (1) and (2) of the definition of ''Affected States'' and by adding the definition of ''Indian country'' in alphabetical order to read as follows:

§ 71.2 Definitions.

* * * * *

Affected States are:

(1) All States and areas within Indian country subject to a part 70 or part 71 program whose air quality may be affected and that are contiguous to the State or the area within Indian country in which the permit, permit modification, or permit renewal is being proposed; or that are within 50 miles of the permitted source. A Tribe shall be treated in the same manner as a State under this paragraph (1) only if EPA has determined that the Tribe is an eligible Tribe.

(2) The State or area within Indian country subject to a part 70 or part 71 program in which a part 71 permit, permit modification, or permit renewal is being proposed. A Tribe shall be treated in the same manner as a State under this paragraph (2) only if EPA has determined that the Tribe is an eligible Tribe.

* * * * *

Indian country means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

* * * * *

3. Section 71.3 is amended by adding paragraph (e) to read as follows:

§ 71.3 Sources subject to permitting requirements.

* * * * *

(e) An owner or operator of a source may submit to the Administrator a written request for a determination of applicability under this section.

(1) *Request content.* The request shall be in writing and include identification of the source and relevant and appropriate facts about the source. The request shall meet the requirements of § 71.5(d).

(2) *Timing.* The request shall be submitted to the Administrator prior to the issuance (including renewal) of a permit under this part as a final agency action.

(3) *Submission.* All submittals under this section shall be made by the responsible official to the Regional Administrator for the Region in which the source is located.

(4) *Response.* The Administrator will issue a written response based upon the factual submittal meeting the requirements of paragraph (e)(1) of this section.

4. Section 71.4 is amended by revising paragraphs (a) introductory text, (b), (f), (h), (i) introductory text, and the first sentence of (j), to read as follows:

§ 71.4 Program implementation.

(a) *Part 71 programs for States.* The Administrator will administer and enforce a full or partial operating permits program for a State (excluding Indian country) in the following situations:

* * * * *

(b) *Part 71 programs for Indian country.* The Administrator will administer and enforce an operating permits program in Indian country, as defined in § 71.2, when an operating permits program which meets the requirements of part 70 of this chapter has not been explicitly granted full or interim approval by the Administrator for Indian country. For purposes of administering the part 71 program, EPA will treat areas for which EPA believes the Indian country status is in question as Indian country.

(1) [Reserved]

(2) The effective date of a part 71 program in Indian country shall be March 22, 1999.

(3) Notwithstanding paragraph (i)(2) of this section, within 2 years of the effective date of the part 71 program in Indian country, the Administrator shall take final action on permit applications from part 71 sources that are submitted within the first full year after the effective date of the part 71 program.

* * * * *

(f) *Use of selected provisions of this part.* The Administrator may utilize any or all of the provisions of this part to administer the permitting process for individual sources or take action on individual permits, or may adopt, through rulemaking, portions of a State or Tribal permit program in combination with provisions of this part to administer a Federal program for the State or in Indian country in substitution of or addition to the Federal program otherwise required by this part.

* * * * *

(h) *Effect of limited deficiency in the State or Tribal program.* The Administrator may administer and enforce a part 71 program in a State or within Indian country even if only limited deficiencies exist either in the initial program submittal for a State or eligible Tribe under part 70 of this chapter or in an existing State or Tribal program that has been approved under part 70 of this chapter.

(i) *Transition plan for initial permits issuance.* If a full or partial part 71 program becomes effective in a State or within Indian country prior to the issuance of part 70 permits to all part 70 sources under an existing program that has been approved under part 70 of this chapter, the Administrator shall take final action on initial permit applications for all part 71 sources in accordance with the following transition plan.

* * * * *

(j) *Delegation of part 71 program.* The Administrator may promulgate a part 71 program in a State or Indian country and delegate part of the responsibility for administering the part 71 program to the State or eligible Tribe in accordance with the provisions of § 71.10; however, delegation of a part of a part 71 program will not constitute any type of approval

of a State or Tribal operating permits program under part 70 of this chapter. * * *

* * * * *

5. Section 71.8 is amended by revising of paragraph (a) and revising paragraph (d) to read as follows:

§ 71.8 Affected State review.

(a) *Notice of draft permits.* When a part 71 operating permits program becomes effective in a State or within Indian country, the permitting authority shall provide notice of each draft permit to any affected State, as defined in § 71.2 on or before the time that the permitting authority provides this notice to the public pursuant to § 71.7 or § 71.11(d) except to the extent § 71.7(e)(1) or (2) requires the timing of the notice to be different.

* * * * *

(d) *Notice provided to Indian Tribes.* The permitting authority shall provide notice of each draft permit to any federally recognized Indian Tribe:

(1) Whose air quality may be affected by the permitting action and is in an area contiguous to the jurisdiction in which the part 71 permit is proposed; or

(2) Is within 50 miles of the permitted source.

* * * * *

6. Section 71.9 is amended by adding paragraph (p) to read as follows:

§ 71.9 Permit fees.

* * * * *

(p) The permitting authority may reduce any fee required under paragraph (c) of this section for sources that are located in areas for which EPA believes the Indian country status is in question and that have paid permit fees to a State or local permitting authority that has asserted CAA regulatory authority over such areas under color of an EPA-approved part 70 program. Upon application by the source, the part 71 fee may be reduced up to an amount that equals the difference between the fee required under paragraph (c) and the fee paid to a State or local permitting authority. The fee reduction will cease if the area in which the source is located is later determined to be Indian country.

7. Section 71.11 is amended by adding paragraph (l)(7) to read as follows:

§ 71.11 Administrative record, public participation, and administrative review.

* * * * *

(l) * * *

(7) Notice of any final agency action regarding a Federal operating permit shall promptly be published in the **Federal Register**.

* * * * * *

[FR Doc. 99–3659 Filed 2–18–99; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 648 and 649

[Docket No. 981026267–9013–02; I.D. 100798B]

RIN 0648–AL36

Fisheries of the Northeastern United States; American Lobster Fishery; Fishery Management Plan (FMP) Amendments to Achieve Regulatory Consistency on Permit Related Provisions for Vessels Issued Limited Access Federal Fishery Permits

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Amendment 11 to the Summer Flounder, Scup, and Black Sea Bass FMP; Amendment 7 to the Atlantic Mackerel, Squid, and Butterfish FMP; Amendment 11 to the Atlantic Surf Clam and Ocean Quahog FMP; Amendment 8 to the Atlantic Sea Scallop FMP; Amendment 10 to the Northeast Multispecies FMP; and Amendment 7 to the American Lobster FMP. These amendments implement regulations to achieve regulatory consistency on vessel permitting for FMPs which have limited access permits issued by the Northeast Region of the NMFS. The regulations are intended to facilitate transactions such as buying, selling, replacing or upgrading commercial fishing vessels issued limited access permits. Consistency among these regulations is especially important for vessels which have limited access permits in more than one fishery in the Northeast Region.

DATES: All measures are effective on March 22, 1999.

ADDRESSES: Copies of these amendments, the regulatory impact review, and the environmental assessment are available from the Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790, or the Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

Comments on the burden hour estimates for collection-of-information requirements contained in this rule should be sent to Jon Rittgers, Acting Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Attention: NOAA Desk Officer, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, 978–281–9279.

SUPPLEMENTARY INFORMATION:

Background

Current limited access vessel permit regulations for FMPs in the Northeast Region were developed by the Mid-Atlantic Fishery Management Council (MAFMC) and New England Fishery Management Council (NEFMC) over a period of many years. As a result, the FMPs differ widely on important provisions regarding vessel replacement and upgrade, permit history transfer, permit splitting, and permit renewal. The current regulations are not only inconsistent among FMPs, they are also, in some instances, overly restrictive. This has proven to be confusing and inefficient, especially for the approximately 2,079 vessel owners, whose vessels possess more than one limited access Federal fishery permit. Routine business transactions, such as the sale or purchase of a vessel, have become unnecessarily complicated because of these differences. In a worst case situation, four different sets of guidelines would need to be interpreted by both industry and NMFS if a vessel with multispecies, summer flounder, black sea bass, and scup limited access permits was bought, sold, or upgraded.

A notice of availability for these amendments was published in the **Federal Register** on October 15, 1998 (63 FR 55357), and the proposed rule to implement the amendments was published on November 13, 1998 (63 FR 63436). The notice of availability solicited public comments through December 14, 1998. The proposed rule solicited public comments through December 28, 1998.

The proposed amendments contained a number of changes to the summer flounder, scup, black sea bass, mahogany quahog, *Loligo*/butterfish, *Illex* squid, northeast multispecies, Atlantic sea scallop, and American lobster FMPs. Details concerning the development and necessity of these

amendments were provided in the notice of proposed rulemaking and are not repeated here. Summary of Approved Measures

NMFS, on behalf of the Secretary of Commerce, has approved the measures consolidating the regulations governing permit-associated activities for all Northeast Region FMPs that have limited access permits. None of the approved measures apply retroactively. The approved measures: (1) allow a one-time vessel upgrade/replacement allowance of 10 percent in size (length overall (LOA), gross registered tons (GRT), and net tons (NT)), or 20 percent in horsepower (HP) for all limited access permits except American lobster (an engine HP increase may be performed separately from a vessel size increase); (2) require that the fishing and permit history of a vessel and the replacement vessel be owned by the same person when transferring limited access permits to replacement vessels; (3) allow voluntary replacement of vessels, regardless of vessel condition; (4) require that the fishing and permit history of a vessel transfer with the vessel whenever it is bought, sold or otherwise transferred, unless there is a written agreement between the buyer and seller, or other credible written evidence, verifying that the seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel; (5) set the effective date of the final rule implementing the FMP amendments March 22, 1999, as the vessel baseline specification date for FMPs without baselines against which upgrades and replacements are measured (mahogany quahog, *Loligo*/butterfish, *Illex*, scup, and black sea bass,); (6) set the effective date of the final rule implementing the FMP amendments as the revised replacement baseline specification date and the newly established upgrade baseline specification date for the summer flounder FMP; (7) authorize the permanent voluntary relinquishment of permit eligibility; (8) implement a restriction on permit splitting; and (9) require a one-time Confirmation of Permit History (CPH) registration and an annual permit renewal. For the American Lobster FMP, the amendments prohibit permit splitting and require a one-time CPH registration.

Technical Changes

Amendment 2 to the Summer Flounder FMP established the vessel permit moratorium, which was initially to expire after 1997. Amendment 10 to the Summer Flounder FMP extended the moratorium indefinitely (62 FR 63872, December 3, 1997), but § 648.4(a)(3)(i) was not revised as necessary. This inadvertent omission is being corrected in this rulemaking.

Comments and Responses

NMFS did not receive any comments from the public regarding the measures contained in the proposed rule, or in response to the Notice of Availability of the omnibus amendment. NMFS specifically sought comments from the public regarding the impact of implementing a restriction on vessel upgrading in some fisheries, but did not receive any responses.

Changes From the Proposed Rule

Four minor changes from the proposed rule are noted. The first change involves the eligibility criteria in §§ 648.4(a)(1)(i)(A), 648.4(a)(2)(i)(A), 648.4(a)(3)(i)(A), 648.4(a)(4)(i)(A), 648.4(a)(5)(i)(A), 648.4(a)(6)(i)(A), and § 648.4(a)(7)(i)(A). The universe of eligibility for limited access permits has been expanded to include vessels which are replacing vessels for which CPHs have been issued. This is intrinsic to the concept of CPHs, and this has been an established procedure in cases where CPH's have been issued. Also, it is consistent with the American lobster eligibility criteria. This rulemaking will codify the procedure.

Similarly, the second change from the proposed rule involves including a CPH in the qualification restriction in § 648.4(a)(1)(i)(C). This section in the multispecies regulations is incorporated by reference in subsequent sections for the other FMPs. The final rule indicates that if more than one vessel owner claims eligibility for a limited access permit or CPH, based on one vessel's fishing and permit history, the Administrator, Northeast Region, NMFS (Regional Administrator) will determine who is entitled to qualify for the permit or CPH and any DAS allocation according to § 648.4(a)(1)(i)(D). The CPH language was added to this section because it is intrinsic to the CPH concept, and has been an established practice in cases where CPH's have been issued. It is also consistent with the American Lobster FMP.

The third change from the proposed rule clarifies the restrictions on changes to a vessel's multispecies or scallop limited access permit category. Sections 648.4(a)(1)(i)(I)(2) and 648.4(a)(2)(i)(I) now clarify that, although it is permissible to request a change in permit category within 45 days of the effective date of a permit, a vessel may fish under only one multispecies or scallop permit category during a fishing year. This clarification is necessary to prohibit vessels from receiving more than one allocation of DAS under different permit categories. This language is consistent with the regulations at § 648.4(a)(1)(i)(I)(1), and codifies existing policy. Also, the term effective date is now used instead of the issue date because the issue date will no longer appear on vessel permits. The effective date will be either the first day of the fishing year, or the date on which the permit is issued if it is issued during the fishing year.

The fourth change clarifies the manner in which the restriction on vessel upgrades in the summer flounder, mahogany quahog, *Loligo*/butterfish, *Illex*, scup and black sea bass fisheries will be implemented for vessels in the process of upgrading when the restriction becomes effective. As has been the policy for the imposition of other limited access permit requirements, if as of the effective date of the restriction, the vessel is in the process of construction or rerigging, or under agreement or written contract for construction or rerigging, the vessel owner will have an additional 12 months to establish the initial baseline specification for the vessel.

Classification

NMFS has determined that the amendments implemented by this final rule are consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. In making this determination, NMFS considered the data, views, and comments received during the comment period for the amendments and proposed rule.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule would not have a significant economic impact on a substantial number of small entities.

NMFS' standards for criteria to determine if a regulatory action is significant include: (1) a decrease in annual gross revenues of more than 5 percent for 20 percent or more of the affected small entities; (2) an increase in total costs of production of more than 5 percent as a result of an increase in compliance costs for 20 percent or more of the affected small entities; (3) compliance costs as a percent of sales for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities for 20 percent or more of the affected small

entities; (4) capital costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or (5) 2 percent of the small business entities affected being forced to cease business operations.

A substantial number of entities may be directly or indirectly impacted by this proposed action because all of the impacted vessels (4,430) in these fisheries are small entities and hold at least one limited access moratorium permit in the Northeast Region. However, the final rule would not have a significant economic impact because it would not result in a decrease in gross revenues, result in significant compliance costs, or cause businesses to cease operations. Many of these small entities currently operate under existing restrictions affecting vessel replacement, vessel upgrade, permit transfers, and permit renewals that are more restrictive and more complicated than the measures contained in this final rule.

Current restrictions governing these activities differ for each vessel, depending upon the unique combination of permits which the vessel possesses. There are currently four different sets of regulations. This creates confusion and is inefficient when attempting to sell, modify, or replace a fishing vessel. These amendments reduce the number of sets of guidelines from four to one, and these guidelines are already applicable in the multispecies and Atlantic sea scallop fisheries.

This action will not result in a decrease in annual gross revenues of more than 5 percent for 20 percent or more of the affected small entities because these new requirements are generally more lenient and less complicated than the existing array of regulations governing permit-related activities. In addition, these requirements do not impose compliance costs, such as gear purchases or direct restrictions on fishing activities. If and when a vessel owner chooses to buy, sell, upgrade, or replace a vessel then the regulations would affect them. However, these actions are still permissible and, with the exception of upgrades in some fisheries, the regulations are more lenient. Because the proposed restriction on vessel upgrades was difficult to quantify, NMFS sought comments from the public to establish any potential impacts that the restriction may have created. No comments regarding the upgrade restrictions were received. Costs of production and capital costs of compliance will not increase because the regulations do not impose immediate compliance requirements. This determination was supported by the lack of comments on any of the measures during the proposed rulemaking. Because this action would not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis was not required.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule contains a new collection-of-information requirement that is subject to the Paperwork Reduction Act (PRA) and has been approved by the OMB under control number 0648-0202. Vessel owners intending to replace vessels, upgrade vessels, or obtain a CPH are required to complete an application form. Public reporting burden for this collection of information is estimated to average 3 hours per response for applicants requesting replacements of vessels permitted for Mid-Atlantic fisheries, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. For applicants requesting a history retention, the estimated average response time is one-half hour per response. For applicants requesting vessel specification upgrades, the estimated average response time is 3 hours. For applicants requesting replacements of undocumented vessels, the estimated average response time is 3 hours.

This rule also contains two collection-of-information requirements previously approved under OMB control number 0648–0202. The response time for a multispecies permit holder to request a change in permit category is 5 minutes. The response time for a multispecies permit holder to request a permit appeal in writing is 3 minutes. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 649

Fisheries, Reporting and recordkeeping requirements.

Dated: February 12, 1999,

Andrew A. Rosenberg, Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 648 and 649 are to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. Section 648.4 is amended by removing paragraph (a)(5)(ii); redesignating existing paragraphs (a)(5)(iii), (a)(5)(iv), and (a)(5)(v) as paragraphs (a)(5)(ii), (a)(5)(iii), and (a)(5)(iv) respectively; revising paragraphs (a)(1)(i)(A) through (a)(1)(i)(C), (a)(1)(i)(E), (a)(1)(i)(F), (a)(1)(i)(H), (a)(1)(i)(I)(*2*), (a)(1)(i)(J) through (a)(1)(i)(L), (a)(2)(i)(A), (a)(2)(i)(B), (a)(2)(i)(H), (a)(2)(i)(I), (a)(3)(i) heading, (a)(3)(i)(A), (a)(3)(i)(B), (a)(3)(i)(C), (a)(4)(i), (a)(5)(i), (a)(6)(i), (a)(7)(i); and adding paragraphs (a)(1)(i)(M), (a)(2)(i)(L), (a)(2)(i)(M), (a)(3)(i)(D) through (a)(3)(i)(L) to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(1) * * *

(i) * * *

(A) *Eligibility*. To be eligible to apply for a limited access multispecies permit, as specified in § 648.82, a vessel must have been issued a limited access multispecies permit for the preceding year, be replacing a vessel that was issued a limited access multispecies permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B) *Application/renewal restrictions*. All limited access permits established under this section must be issued on an annual basis by the last day of the fishing year for which the permit is required, unless a Confirmation of Permit History (CPH) has been issued as specified in paragraph (a)(1)(i)(J) of this section. Application for such permits must be received no later than 30 days before the last day of the fishing year. Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years.

(C) *Qualification restriction*. Unless the Regional Administrator determines otherwise, no more than one vessel may qualify, at any one time, for a limited access permit or CPH based on that or another vessel's fishing and permit

history. If more than one vessel owner claims eligibility for a limited access permit or CPH, based on one vessel's fishing and permit history, the Regional Administrator will determine who is entitled to qualify for the permit or CPH and any DAS allocation according to paragraph (a)(1)(i)(D) of this section.

* * * * *

(E) *Replacement vessels.* To be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

(*1*) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel's baseline specifications, as applicable.

(*2*) The replacement vessel's length, GRT, and NT may not exceed by more than 10 percent the length, GRT, and NT of the vessel's baseline specifications, as applicable.

(F) *Upgraded vessel.* A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain or renew a limited access permit, only if the upgrade complies with the following:

(*1*) The vessels's horsepower may be increased only once, whether through refitting or replacement. Such an increase may not exceed 20 percent of the horsepower of the vessel's baseline specifications, as applicable.

(*2*) The vessel's length, GRT, and NT may be increased only once, whether through refitting or replacement. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

* * * * *

(H) *Vessel baseline specifications.* The vessel baseline specifications in this section are the respective specifications (length, GRT, NT, horsepower) of the vessel that was initially issued a limited access permit as of the date the initial vessel applied for such permit.

(I) * * *

(*2*) The owner of a vessel issued a limited access multispecies permit may request a change in permit category, unless otherwise restricted by paragraph (a)(1)(i)(I)(*1*) of this section. The owner of a limited access multispecies vessel eligible to request a change in permit category must elect a category upon the vessel's permit application and will have one opportunity to request a change in permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. If such a request is not received within 45 days, the vessel owner may not request a change in permit category and the vessel permit category will remain unchanged for the duration of the fishing year. A vessel may not fish in more than one multispecies permit category during a fishing year.

* * * * *

(J) *Confirmation of permit history.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (a)(1)(i)(K) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form refers to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a)(1)(i)(E) of this section.

(K) *Abandonment or voluntary relinquishment of permit history.* If a vessel's limited access permit history for a particular fishery is voluntarily relinquished to the Regional Administrator or abandoned through failure to renew or otherwise, no limited access permit for that fishery may be reissued or renewed based on that vessel's history or to any other vessel relying on that vessel's history.

(L) *Restriction on permit splitting.* A limited access permit issued pursuant to this section may not be issued to a vessel or its replacement or remain valid, if the vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

(M) *Appeal of denial of permit—*(*1*) *Eligibility.* Any applicant eligible to apply for a limited access multispecies permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(*i*) The information used by the Regional Administrator was based on mistaken or incorrect data.

(*ii*) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria.

(*iii*) The applicant has new or additional information.

(*2*) *Appeal review.* The Regional Administrator will appoint a designee who will make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator will issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(*3*) *Status of vessels pending appeal.* A vessel denied a limited access multispecies permit may fish under the limited access multispecies category, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity, pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

* * * * *

(2) * * *

(i) * * *

(A) *Eligibility*. To be eligible to apply for a limited access scallop permit, a vessel must have been issued a limited access scallop permit for the preceding year, be replacing a vessel that was issued a limited access scallop permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B) *Application/renewal restrictions*. See paragraph (a)(1)(i)(B) of this section.

* * * * *

(H) *Vessel baseline specifications*. See paragraph (a)(1)(i)(H) of this section.

(I) *Limited access permit restrictions.* A vessel may be issued a limited access scallop permit in only one category during a fishing year. The owner of a vessel issued a limited access scallop permit must elect a permit category upon the vessels permit application and will have one opportunity to request a change in permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. After this date, the vessel must remain in that permit category for the duration of the fishing year. Any DAS that a vessel uses prior to a change in permit category will be counted against its allocation received under any subsequent permit category.

* * * * *

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(M) *Percentage ownership restrictions.* (*1*) For any vessel acquired after March 1, 1994, a vessel owner is not eligible to be issued a limited access scallop permit for the vessel if the issuance of the permit will result in the vessel owner, or in any other person who is a shareholder or partner of the vessel owner, having an ownership interest in limited access scallop vessels in excess of 5 percent of the number of all limited access scallop vessels at the time of permit application.

(*2*) Vessel owners who were initially issued a 1994 limited access scallop permit or were issued or renewed a limited access scallop permit for a vessel in 1995 and thereafter, in compliance with the ownership restrictions in paragraph (a)(2)(i)(M)(*1*) of this section, are eligible to renew such permits(s), regardless of whether the renewal of the permits will result in the 5– percent ownership restriction being exceeded.

(*3*) Having an ownership interest includes, but is not limited to, persons who are shareholders in a vessel owned by a corporation, who are partners (general or limited) to a vessel owner, or who, in any way, partly own a vessel.

* * * * *

(3) * * *

(i) *Moratorium permits*—(A) *Eligibility*. To be eligible to apply for a moratorium permit to fish for and retain summer flounder in excess of the possession limit in § 648.105 in the EEZ, a vessel must have been issued a summer flounder moratorium permit for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B) *Application/renewal restriction*. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. The vessel baseline specifications in this section are the respective specifications (length, GRT, NT, horsepower) of the vessel as of March 22, 1999, unless the vessel is in the process of construction or rerigging or under agreement or written contract for construction or rerigging, as of the effective baseline specification date in which case the baseline specifications will be established no later than February 19, 2000.

(I) [Reserved]

(J) Confirmation of permit history. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

* * * * *

(4) * * *

(i) *Maine mahogany quahog permit.* (A) A vessel is eligible for a Maine mahogany quahog permit to fish for ocean quahogs in the Maine mahogany quahog zone if it meets the following eligibility criteria in paragraphs (a)(1) and (a)(2) of this section, and an application for a Maine mahogany quahog permit is submitted by May 19, 1999. After May 19, 1999, to be eligible to apply for a Maine mahogany quahog permit, a vessel must have been issued a Maine mahogany quahog permit for the preceding year, be replacing a vessel that was issued a Maine mahogany quahog permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(*1*) The vessel was issued a Federal Maine Mahogany Quahog Experimental Permit during one of the experimental fisheries authorized by the Regional Administrator between September 30, 1990, and September 30, 1997; and,

(*2*) The vessel landed at least one Maine bushel of ocean quahogs from the Maine mahogany quahog zone as documented by fishing or shellfish logs submitted to the Regional Administrator prior to January 1, 1998.

(B) Application/renewal restriction. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(M) *Appeal of denial of a permit.* (*1*) Any applicant denied a Maine mahogany quahog permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator's designee erred in concluding that the vessel did not meet

the criteria in paragraph (a)(4)(i)(A) of this section. The appeal must set forth the basis for the applicant's belief that the decision of the Regional Administrator's designee was made in error.

(*2*) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator.

(*3*) The hearing officer shall make a recommendation to the Regional Administrator.

(*4*) The Regional Administrator will make a final decision based on the criteria in paragraph (a)(4)(i)(A) of this section and on the available record, including any relevant documentation submitted by the applicant and, if a hearing is held, the recommendation of the hearing officer. The decision on the appeal by the Regional Administrator is the final decision of the Department of Commerce.

* * * * *

(5) * * *

(i) *Loligo squid/butterfish and Illex squid moratorium permits* (*Illex* squid moratorium is applicable from July 1, 1997, until July 1, 2002)—(A) *Eligibility*. To be eligible to apply for a moratorium permit to fish for and retain *Loligo* squid, butterfish, or *Illex* squid in excess of the incidental catch allowance in paragraph (a)(5)(ii) of this section in the EEZ, a vessel must have been issued a *Loligo* squid and butterfish moratorium permit or *Illex* squid moratorium permit, as applicable, for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B) *Application/renewal restriction*. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting*. See paragraph (a)(1)(i)(L) of this section.

* * * * *

(6) * * *

(i) *Moratorium permit*—(A) *Eligibility*. To be eligible to apply for a moratorium permit to fish for and retain scup, a vessel must have been issued a scup moratorium permit for the preceding year, be replacing a vessel that was issued a scup moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B) Application/renewal restriction. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) Restriction on permit splitting. See paragraph (a)(1)(i)(L) of this section.

* * * * *

(7) * * *

(i) *Moratorium permits*—(A) *Eligibility*. To be eligible to apply for a moratorium permit to fish for and retain black sea bass in excess of the possession limit established pursuant to § 648.145 in the EEZ north of 35°15.3' N. Lat., the latitude of Cape Hatteras Light, NC, a vessel must have been issued a black sea bass moratorium permit for the preceding year, be replacing a vessel that was issued a black sea bass moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(B) *Application/renewal restrictions*. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction*. See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership*. See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels*. See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel*. See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction*. See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications*. See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history*. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits*. See paragraph (a)(1)(i)(K) of this section.

(L) Restriction on permit splitting. See paragraph (a)(1)(i)(L) of this section.

* * * * *

3. Section 648.14 is amended by adding paragraphs (a)(114) and (a)(115) to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(114) Fish for, possess, or land species regulated under this part with or from a vessel that is issued a limited access permit under §§ 648.4(a)(1)(i), 648.4(a)(2)(i), 648.4(a)(3)(i), 648.4(a)(4)(i), 648.4(a)(5)(i), 648.4(a)(6)(i), or § 648.4(a)(7)(i), and that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i)(E) and (F).

(115) Fish for, possess, or land species regulated under this part with or from a vessel issued a limited access permit under §§ 648.4(a)(1)(i), 648.4(a)(2)(i), 648.4(a)(3)(i), 648.4(a)(4)(i), 648.4(a)(5)(i), 648.4(a)(6)(i), or § 648.4(a)(7)(i), that has had the length, GRT, or NT of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i)(E) and (F).

* * * * *

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

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

2. Section 649.4 is amended by revising paragraph (b)(2)(i) and by adding paragraphs (b)(3)(iii), (b)(3)(iv), and (b)(3)(v) to read as follows:

§ 649.4 Vessel permits.

* * * * *

(b) * * *

(2) * * *

(i) To be eligible to renew or apply for a limited access lobster permit, a vessel or permit applicant must have been issued a limited access lobster permit for the preceding year, be replacing a vessel that was issued a limited access lobster permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history. If more than one applicant claims eligibility to apply for a limited access American lobster permit or CPH based on one fishing and permit history, the Regional Administrator shall determine who is entitled to qualify for the limited access permit or permit history confirmation.

* * * * *

(3) * * *

(iii) *Restriction on permit splitting.* A limited access American lobster permit

may not be issued to a vessel or to its replacement, or remain valid, if a vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

(iv) *Consolidation restriction*. Limited access permits may not be combined or consolidated.

(v) *Confirmation of permit history*. Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (q) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Information requirements for the CPH application are the same as those for a limited access permit with any request for information about the vessel being applicable to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (b)(1)(i)(D) of this section.

* * * * *

[FR Doc. 99–4061 Filed 2–18–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222313–8320–02; I.D. 021299B]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish by Vessels Using Non-pelagic Trawl Gear in the Red King Crab Savings Subarea

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for groundfish with non-pelagic trawl gear in the red king crab savings subarea (RKCSS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the amount of the interim 1999 red king crab bycatch limit specified for the RKCSS.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 14, 1999, until superseded by the Final 1999 Harvest Specification for Groundfish, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The Interim 1999 Harvest Specifications of Groundfish (64 FR 50, January 4, 1999) established the amount of the interim 1999 red king crab bycatch limit specified for the RKCSS as 10,000 animals. The RKCSS was closed to fishing with non-pelagic trawl gear on January 25, 1999 (64 FR 4602, January 29, 1999) and then re-opened on February 1, 1999 (64 FR 5720, February 5, 1999) when it was determined that the bycatch limit was not fully utilized.

In accordance with § 679.21(e)(7)(ii)(B), the Administrator, Alaska Region, NMFS, has determined that the amount of the interim 1999 red king crab bycatch limit specified for the RKCSS will be caught. NMFS is closing the RKCSS to directed fishing for groundfish with non-pelagic trawl gear.

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

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent exceeding the amount of the interim 1999 red king crab bycatch limit specified for the RKCSS. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to the public interest. The fleet will soon take the amount. Further delay would only result in the amount of the interim 1999 red king crab bycatch limit specified for the RKCSS being exceeded. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under U.S.C 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

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

Dated: February 12, 1999.

Gary C. Matlock,

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

[FR Doc. 99–4030 Filed 2–12–99; 5:00 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 33
Friday, February 19, 1999

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.

FEDERAL ELECTION COMMISSION

11 CFR PARTS 100 and 114

[Notice 1999–3]

Definition of ''Member'' of a Membership Association

AGENCY: Federal Election Commission.

ACTION: Notice of Public Hearing.

SUMMARY: The Federal Election Commission is announcing a public hearing on additional proposed changes to its rules governing who qualifies as a ''member'' of a membership association.

DATES: The hearing will be held at 10:00 a.m. on Wednesday, March 17, 1999. Requests to testify must be received on or before March 1, 1999. Persons requesting to testify must also submit written comments by March 1, 1999, if they have not previously filed written comments on the proposed rules.

ADDRESSES: Requests to testify, and any accompanying comments, should be addressed to Ms. Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written requests and comments should be sent to the Commission's postal service address: Federal Election Commission, 999 E St. NW, Washington, DC 20463. Faxed requests and comments should be sent to (202) 219–3923. Commenters submitting faxed material also should submit a printed copy to the Commission's postal service address to ensure legibility. Requests to testify and comments also may be sent by electronic mail to members@fec.gov. Persons sending requests and comments by electronic mail should include their full name, electronic mail address and postal service address within the text of the request and comments. Commission hearings are held in the Commission's ninth floor meeting room, 999 E St. NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street NW, Washington, DC 20463, (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: On December 16, 1998, the Commission published a second Notice of Proposed Rulemaking (''NPRM'') seeking additional comments on proposed amendments to its rules governing who qualifies as a ''member'' of a membership association. 63 FR 69224. The comment period ended on February 1, 1999.

The Commission originally published an NPRM on this topic on December 22, 1997. 62 FR 66832. The Commission held a public hearing on this rulemaking on April 29, 1998. When the first NPRM and hearing produced no consensus on the best way to address this issue, the Commission published the current NPRM. This document focuses on attributes of membership organizations as well as on the qualifications of their members.

To date the Commission has received comments from several sources in response to the second NPRM. Although that NPRM did not announce a public hearing on the proposed rules, one commenter has requested a public hearing, and three others have requested to testify at a public hearing, if one is held.

After considering these requests and the other comments received to date in response to the NPRM, the Commission believes a public hearing would be helpful in considering the issues raised in this rulemaking. The hearing will be held on 10:00 a.m. on March 17, 1999.

Dated: February 12, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–4054 Filed 2–18–99; 8:45 am]
BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR PARTS 9003, 9004, 9007, 9008, 9032, 9033, 9034, 9035, 9036 and 9038

[Notice 1999–4]

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Notice of Public Hearing.

SUMMARY: The Federal Election Commission is announcing a public hearing on proposed changes to its rules governing publicly financed Presidential primary and general election candidates.

DATES: The hearing will be held at 10:00 a.m. on Wednesday, March 24, 1999. Requests to testify must be received on or before March 1, 1999. Persons requesting to testify also must submit written comments by March 1, 1999, if they have not previously filed written comments on the proposed rules.

ADDRESSES: Requests to testify, and any accompanying comments, should be addressed to Ms. Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written requests and comments should be sent to the Commission's postal service address: Federal Election Commission, 999 E St. NW, Washington, DC 20463. Faxed requests and comments should be sent to (202) 219–3923. Commenters submitting faxed material also should submit a printed copy to the Commission's postal service address to ensure legibility. Requests to testify and comments also may be sent by electronic mail to publicfund@fec.gov. Persons sending requests and comments by electronic mail should include their full name, electronic mail address and postal service address within the text of the request and comments. Commission hearings are held in the Commission's ninth floor meeting room, 999 E St. NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rosemary C. Smith, Senior Attorney, 999 E Street NW, Washington, DC 20463, (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: On December 16, 1998, the Commission published a Notice of Proposed Rulemaking (''NPRM'') seeking comments on various amendments to its rules governing the public financing of Presidential primary and general election campaigns. 63 FR 69524. The comment period ended on Feb. 1, 1999.

To date the Commission has received comments from several sources. Although the NPRM did not announce a public hearing on the proposed rules, two commenters have requested to testify at a public hearing, if one is held.

After considering these requests and the other comments received to date in response to the NPRM, the Commission believes a public hearing would be helpful in considering the issues raised in this rulemaking. The hearing will be held on 10:00 a.m. on Wednesday, March 24, 1999.

Dated: February 12, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–4055 Filed 2–18–99; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AEA–02]

Proposed Establishment of Class E Airspace; Logan, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Logan, WV. The development of new Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) at Logan County Airport, Logan, WV, has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before March 22, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 99–AEA–02, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430. The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AEA–02.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace area at Logan, WV. A GPS Runway (RWY) 24 SIAP and a GPS RWY 6 SIAP has been developed for Logan County Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, is proposed to be amended as follows:

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

* * * * *

AEA WV E5 Logan, WV [New]

Logan County Airport, WV
(Lat. 37°51′20″ N., long. 81°54′57″ W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Logan County Airport.

* * * * *

Issued in Jamaica, New York, on February 3, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–4172 Filed 2–18–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AEA–03]

Proposed Revocation of Class E Airspace; Palmyra, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the Class E airspace area at Palmyra Airpark Airport, Palmyra, NY. The airport has been reclassified from public use to private use and the Standard Instrument Approach Procedure (SIAP) to the airport has been canceled. The need for Class E airspace no longer exists. Adoption of this proposal would result in the affected area reverting to Class G airspace.

DATES: Comments must be received on or before March 22, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 99–AEA–03, FAA Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AEA–03.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, FAA Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the Class E airspace extending upward from 700 feet above the surface at Palmyra Airpark Airport, Palmyra, NY. The airport has reverted to private use and the SIAP to the airport has been canceled negating the need for airspace to accommodate IFR operations. The area will be removed from appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently from the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, is proposed to be amended as follows:

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

* * * * *

AEA NY E5 Palmyra, NY [Removed]

* * * * *

Issued in Jamaica, New York, on February 3, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–4170 Filed 2–18–99; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300773; FRL–6052–2]

RIN 2070–AB78

Diphenylamine; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This is a proposed regulation to establish a time-limited tolerance for residues of diphenylamine in or on pears. This regulation proposes to establish a maximum permissible level for residues of diphenylamine in this food commodity pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 1, 2001.

DATES: Comments must be received by EPA on or before March 8, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300773], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300773], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300773]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Pat Cimino, Office of the Director (7501C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9357, e-mail: Cimino.pat@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408(e) and (l) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l), is proposing to establish a tolerance for residues of the plant growth regulator diphenylamine, in or on pears at 10 parts per million (ppm). This proposed regulation is for a time-limited tolerance which will expire December 1, 2001.

I. Background and Statutory Authority

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

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

II. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997)(FRL–5754–7) .

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of diphenylamine and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of diphenylamine on pears at 10 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. *Acute toxicity*. For acute dietary exposure (1 day) a risk assessment is not required since no appropriate toxicity endpoint or NOEL could be identified from the available data. No developmental toxicity was observed at any dose level in the test animals. The highest doses tested were 100 milligrams/kilogram/day (mg/kg/day) in rats and 300 mg/kg/day in rabbits.

2. *Short - and intermediate - term toxicity*. Short- and intermediate-term risk assessments take into account exposure from indoor and outdoor residential exposure plus chronic dietary food and water (considered to be a background exposure level). This risk assessment is not required because there are no indoor or residential uses for this pesticide. Risk from chronic dietary food and water toxicity endpoints and

exposure is taken into account under the chronic exposure and risk section in Unit II.B.2.ii. in the preamble of this document.

3. *Chronic toxicity*. EPA has established the RfD for diphenylamine at 0.03 mg/kg/day. This RfD is based on a chronic dog study with a LOEL of 10 mg/kg/day. An Uncertainty Factor (UF) of 100 was used to account for both the interspecies extrapolation and the intraspecies variability. An additional UF of 3 was recommended to account for the lack of a NOEL and the Committee's concern with respect to potential methemoglobinemia which was not tested in this study.

It should be noted that although the LOEL was established at 10 mg/kg/day, in both males and females (based on hematological and clinical chemistry changes, and clinical signs of toxicity), because of the lack of information on methemoglobinemia the LOEL could not be verified and was considered tentative until this issue is addressed. The Agency has required that a subchronic study of sufficient duration be conducted in dogs to investigate this possible methemoglobinemic effect to accurately define the NOEL in the critical study. This study has been initiated by the registrant.

This chemical has been reviewed by the FAO/WHO joint committee meeting on pesticide residue (JMPR) and an acceptable daily intake (ADI) of 0.02 mg/kg/day has been established by that Committee.

4. *Carcinogenicity*. The Agency classified diphenylamine as ''not likely'' in reference to carcinogenicity in April, 1997. This classification was based on the lack of evidence for carcinogenicity in the two acceptable carcinogenicity studies in either male or female CD-1 mice or Sprague-Dawley rats.

A nitrosamine impurity, diphenylnitrosamine, occurs in diphenylamine technical product. Diphenylnitrosamine is a quantified carcinogen. The technical product producer, Elf Atochem, has submitted nitrosamine data which confirms that the maximum total nitrosamine contamination expected for the diphenylamine technical would be 10 ppm. The Agency concluded that residue data depicting nitrosamine levels in pome fruits (apples and pears) would not be required, but that a nitrosamine level of 0.0001 ppm in apples and pears should be used in dietary risk assessments for diphenylamine.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.190) for the residues of diphenylamine, in or on apples, meat and milk. Risk assessments were conducted by EPA to assess dietary exposures and risks from diphenylamine as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An acute risk assessment is not required since no appropriate endpoint or NOEL could be identified from the available data. No developmental toxicity was seen at any dose level in the test animals. The highest doses tested were 100 mg/kg/day in rats and 300 mg/kg/day in rabbits.

ii. *Chronic exposure and risk.* A Dietary Exposure Evaluation Model (DEEM) chronic exposure analysis was performed by the Agency using Anticipated Residue Concentration (ARC) for apples and Theorhetical Maximum Residue Concentration (TMRC) for pears, meat and milk. Tolerances are currently established for apples at 10 ppm and for meat and milk at 0 ppm. The Agency has recommended that the following tolerances be established in the 1998 Registration Eligibility Document (RED) for diphenylamine: wet apple pomace (an animal feed item) at 30.0 ppm, milk at 0.01 ppm, meat except liver at 0.01 ppm, and meat liver at 0.10 ppm. The recommended tolerances are supported by data and the Agency, on its own initiative, is in the process of establishing these tolerances.

The Agency determined that 10 ppm is appropriate for diphenlyamine residues in pears for a time-limited tolerance based on bridging data from the apple residue studies to pears. The use patterns are identical for apples and pears and the fruit are substantially similar. The TMRC level for apples, 10 ppm, was determined from field testing at maximum label rates and sampling immediately after treatment. The wet apple pomace residue value, 30 ppm, was derived from apple processing data using the highest average field trial residue value, 5.86 ppm, multiplied by the average concentration factor, 4.7x, observed in wet apple pomace. The meat and milk TMRC values recommended in the 1998 RED for diphenylamine were obtained from a ruminant feeding study which indicates that at 1x, 3x and 10x feeding rates (30 ppm, 90 ppm and 300 ppm diphenylamine) diphenylamine was detected in one or more meat, meat by-product or milk fractions.

The ARC for apples used in the DEEM chronic exposure analysis is 0.562 ppm and was obtained from USDA's Pesticide Data Program (PDP). The PDP program was designed by EPA and USDA to provide EPA with market basket type residue values for refined risk assessments. The PDP samples crop commodities from grocery store distribution centers for pesticide residue analysis in order to better determine the residues which occur in foods at the time consumers purchase them. The 18 fold drop in tolerance values between the TMRC derived apple tolerance of 10 ppm compared to the ARC/PDP derived tolerance of 0.562 ppm represents the difference in tolerance levels at the ''farm gate'' (worst case tolerance levels measured immediately after harvest or in the case of diphenylamine, immediately after treatment) versus the tolerance level which occurs close to actual purchase time.

The proposed pear tolerance at the TMRC of 10 ppm, was used in the DEEM chronic exposure analysis to calculate the dietary contribution from pears. The addition of pears to the apple ARC and RED recommended tolerances for meat, mild and wet apple pomace represents 3.9% of the RfD for the general U.S. population, and 31.3% of the RfD for the most sensitive sub-population, non-nursing infants (<1 year old).

Diphenylamine is classified as ''not likely'' to be carcinogenic to humans via the relevant routes of exposure.

A dietary risk assessment for diphenylnitrosamine, an impurity in technical product diphenylamine, was calculated using the nitrosamine residue level of 0.0002 ppm (0.0001 ppm each for apples and pears). The Q* for diphenylnitrosamine is 4.9×10^{-3} as reported on IRIS. The DEEM chronic exposure analysis calculated an anticipated residue contribution (ARC) for the total U.S. population of 0.001155 mg/kg/day.

To calculate the cancer risk for the diphenylnitrosamine, multiply the ARC (0.001155 mg/kg/day) by 2.0×10^{-5} (because diphenylnitrosamine dietary contribution from apples and pears is 20 ppm or 20/1,000,000). Divide this result by 70 years to correct the average daily dose to a lifetime average daily dose. Finally, multiply this result by the Q* of 0.0049 mg/kg/day and the cancer risk is calculated to be 1.6×10^{-12}.

$0.001155 \text{ mg/kg/day} \times 2.0 \times 10^{-5} = 2.3 \times 10^{-8}$

$2.3 \times 10^{-8} / 70 \text{ years} = 3.3 \times 10^{-10}$

$3.3 \times 10^{-10} \times 4.9 \times 10^{-3} = 1.6 \times 10^{-12}$ mg/kg/day

This value is well below the Agency's level of concern for nitrosamine in the diet.

2. *From drinking water.* Dietary risk from drinking water is assumed to be negligable because negligable exposure results from the pesticidal uses. The use pattern is limited to pome fruit drenches in fruit packing houses and there are no detections in the Agency's Pesticides in Ground water Database or the U.S. EPA's ''STORET'' database.

3. *From non-dietary exposure.* Diphenylamine is not currently registered for use in residential non-food sites.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether diphenylamine has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, diphenylamine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that diphenylamine has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk.* An acute dietary risk assessment was not conducted since no appropriate endpoint or NOEL could be identified from the available data. No developmental toxicity was observed at any dose level in the test animals. The highest doses tested were 100 mg/kg/day in rats and 300 mg/kg/day in rabbits.

2. *Chronic risk.* Using the combination of ARC and TMRC exposure assumptions described in Unit II.B.1.ii. in the preamble of this document, EPA has concluded that aggregate exposure to diphenylamine from food will utilize 3.9% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non- nursing infants and is discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Exposure is from food only as drinking water exposure is considered negligable and there are no residential uses and consequently no exposure from non-dietary, non-occupational uses of this pesticide.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account indoor and outdoor residential exposure plus chronic dietary food and water (considered to be a background exposure level). A short- and intermediate-term risk assessment is not required as there are no indoor or outdoor residential uses for this pesticide and chronic exposure is accounted for above.

4. *Aggregate cancer risk for U.S. population.* Diphenylamine is classified as ''not likely'' to be carcinogenic to humans via the relevant routes of exposure.

A dietary risk assessment for diphenylnitrosamine, the impurity in diphenylamine, was calculated using the nitrosamine residue level of 0.0001 ppm each for apples and pears. The Q* for diphenylnitrosamine is 4.9×10^{-3} as reported on IRIS. The chronic DRES analysis calculated an anticipated residue contribution (ARC) for the total U.S. population of 0.001155 mg/kg/day. Using these values, the cancer risk is calculated to be 1.6×10^{-12}. This value is well below the Agency's level of concern for nitrosamine in the diet.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to diphenylamine residues.

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

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

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

ii. *Developmental toxicity studies.* In a developmental toxicity study, pregnant female Sprague-Dawley rats (25/group) received diphenylamine (99.9%) in corn oil by oral gavage at dose levels of 0, 10, 50, or 100 mg/kg/day from gestation day six through gestation day 15 inclusive; dams were sacrificed on gestation day 20. None of the rats died during the study. Maternal toxicity was evidenced by increased splenic weights, enlarged spleens and blackish-purple colored spleen in the dams at 100 mg/kg/day. The maternal toxicity NOEL was 50 mg/kg/day and the LOEL was 100 mg/kg/day. No developmental toxicity was seen at any dose level. The developmental toxicity NOEL was equal to or greater than 100 mg/kg/day the highest dose tested (HDT); a LOEL was not established.

In a developmental toxicity study, pregnant New Zealand White rabbits received either 0, 33, 100, or 300 mg/kg/day diphenylamine (99.9%) suspended in 1% methylcellulose by oral gavage from gestation day 7 through 19, inclusive. Animals came from 3 sources (vendors). Maternal toxicity was noted at 300 mg/kg as decreases in food consumption and associated initial reductions in body weight gain. The maternal toxicity NOEL was 100 mg/kg/day and the LOEL was 300 mg/kg/day based on decreased body weight gains and food consumption early during the treatment period. No developmental toxicity was noted at any dose level. The developmental toxicity NOEL was

equal to or greater than 300 mg/kg/day (HDT); a LOEL was not established.

iii. *Reproductive toxicity study*. In a two-generation reproductive toxicity study, Sprague-Dawley rats (28 per sex/group) received diphenylamine (99.8%) in the diet at dose levels of 0, 500, 1,500, or 5,000 ppm (0, 40, 115, or 399 mg/kg/day for F_0 males and 0, 46, 131, or 448 mg/kg/day for F_0 females, respectively, during premating). Compound-related systemic toxicity was observed in a dose related manner among both sexes and generations at all dose levels. The systemic toxicity NOEL was less than 500 ppm (40 mg/kg/day in males and 46 mg/kg/day in females) and the LOEL was less than or equal to 500 ppm based on gross pathological findings in the kidney, liver, and spleen. Developmental toxicity was observed at 1,500 and 5,000 ppm, as evidenced by significantly decreased body weight for F_1 pups at 5,000 ppm throughout lactation (11-25 % less than control), for F_2 pups at 5,000 ppm from lactation day (LD) 4 through LD 21 (10%-29% less than control), and for F_2 pups at 1,500 ppm on LD 14 (10%) and LD 21 (12%). The developmental toxicity NOEL was 500 ppm (46 mg/kg/day for maternal animals) and the LOEL was 1,500 ppm (131 mg/kg/day for maternal animals) based on decreased F_2 pup body weight in late lactation. Reproductive toxicity was noted as smaller litter sizes at birth (significant for the F_2 litters) in both generations at 5,000 ppm. The reproductive toxicity NOEL was 1,500 ppm (131 mg/kg/day for maternal animals) and the LOEL was 5,000 ppm (448 mg/kg/day for maternal animals), based upon decreased litter size in both generations.

iv. *Pre- and post-natal sensitivity*. For purposes of assessing the pre- and post-natal toxicity of diphenylamine, EPA has evaluated two developmental and one reproduction study. Based on current toxicological data requirements, the data base for diphenylamine, relative to pre- and post-natal toxicity is complete. However, as EPA fully implements the requirements of FQPA, additional data related to the special sensitivity of infants and children may be required.

The data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to diphenylamine. The reproduction study demonstrated that the offspring were less sensitive than the adults and there was no developmental toxicity observed in either the rat or rabbit developmental studies at any dose tested.

v. *Conclusion*. There is a complete toxicity database for diphenylamine and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk*. An acute dietary risk assessment was not conducted since no appropriate endpoint or NOEL could be identified from the available data. No developmental toxicity was observed at any dose level in the test animals. The highest doses tested were 100 mg/kg/day in rats and 300 mg/kg/day in rabbits.

3. *Chronic risk*. Using the exposure assumptions described above, EPA has concluded that aggregate exposure to diphenylamine from food will utilize 31.3% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Exposure is from food only as drinking water exposure is considered negligable and there are no residential uses and consequently no exposure from non-dietary, non-occupational uses of this pesticide

4. *Short- or intermediate-term risk*. Short- or intermediate-term non-dietary, non-occupational exposure scenarios do not exist for diphenlyamine and a short- or intermediate-term aggregate risk assessment is not required.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to diphenylamine residues.

IV. Other Considerations

A. Metabolism In Plants and Animals

The qualitative nature of the residue in plants and livestock is adequately understood based on acceptable apple, ruminant and poultry metabolism studies. The Agency has concluded that the residue of concern in plants and livestock is diphenylamine *per se*.

B. Analytical Enforcement Methodology

The FDA PESTDATA database dated 1/94 (Pam Vol. I, Appendix I) indicates that diphenylamine is completely recovered using FDA Multiresidue Protocol D (PAM I Section 232.4). In addition, a GC/mass selective detection (MSD) method is available for the quantitation of diphenylamine residues in apples which should be bridgeable to pears.

C. Magnitude of Residues

For the purposes of this time-limited tolerance, apple data have been used to estimate the magnitude of residues on pears. The use patterns for apples and pears are identical and the fruit types are substantially similar. Adequate magnitude of the residue data are available to support the use on apples. Acceptable residue data depicting diphenylamine residues in apples following a single posttreatment application at the maximum use rate have been submitted, and indicate that the existing 10 ppm tolerance for diphenylamine residues in apples is also appropriate for pears.

D. International Residue Limit

There are no international residues limits established for diphenylamine on pears.

E. Rotational Crop Restrictions

Rotational crop restrictions do not apply for two reasons: (1) diphenylamine is used indoors only in fruit packing houses as a postharvest drench treatment to control scald; and (2) pears are a perennial crop and are not subject to rotational crop restrictions.

V. Conclusion

Numerous residues of diphenylamine have been detected on pears, a use which is not registered and does not have an established tolerance, by the United States Department of Agriculture's (USDA) Pesticide Data Program (PDP) in both domestic and foreign pears due to inadvertant transfer of diphenylamine residues from apples to pears during packing. Public reporting of PDP food residue monitoring is expected in late December, 1999 and in order to prevent public concern regarding residues of diphenylamine in pears the Agency assessed the aggregate risk from exposure on pears, found it acceptable, and is proposing to establish a time-limited tolerance for this use before the USDA report is released. A 15-day comment period is being allowed for this proposed rule in order to establish a tolerance before the USDA report is released. The U.S. pear industry has asked the IR-4 program and pesticide registrants to generate the reports and data required to support the establishment of a tolerance and registration of diphenylamine on pears. The data generation have been initiated and the Agency expects these data to be submitted in two years. In the meantime, the Agency has assessed the risk from this use on pears based on bridging data from apples to pears and found that a reasonable certainty of no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other

exposures for which there is reliable information. Therefore, the Agency is proposing that a time-limited tolerance for residues of diphenylamine which will expire on December 1, 2001 be established for pears at the same level as apples, 10 ppm.

VI. Objections and Hearing Requests

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

Any person may, by March 8, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this proposed rulemaking under docket control number [OPP–300773] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C) Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

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

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

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

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

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 representatives 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 unfunded mandates.''

Today's proposed rule does not create an unfunded Federal 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 Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

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, that significantly 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 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 proposed 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 Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 180

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

Dated: February 10, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.190 is revised to read as follows:

§ 180.190 Diphenylamine; tolerances for residues.

(a) *General.* Tolerances for the residues of the plant regulator diphenylamine are established as follows:

Commodity	Parts per million
Apples from preharvest or postharvest use (including use of impregnated wraps)..	10
Cattle, meat	0
Goat, meat	0
Horse, meat	0
Sheep, meat	0

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

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

(d) *Indirect or inadvertent residues.* A time-limited tolerance is established for the indirect or inadvertent residues of diphenylamine in or on the following commodity:

Commodity	Parts per million	Expiration/ Revocation Date
Pears	10	12/1/01

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 261

[SW–FRL–6304–4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to grant a petition submitted by Occidental Chemical Corporation (Occidental Chemical), to exclude (or delist) a certain solid waste generated at its Deer Park, Texas, facility from the lists of hazardous wastes contained in 40 CFR 261.24, 261.31, and 261.32, (hereinafter all sectional references are to 40 CFR unless otherwise indicated). This petition was submitted under § 260.20, which allows any person to petition the Administrator to modify or revoke any provision of §§ 260 through 266, 268 and 273, and § 260.22(a), which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator specific'' basis from the hazardous waste lists. This proposed decision is based on an evaluation of waste-specific information provided by the petitioner. If this proposed decision is finalized, the petitioned waste will be conditionally excluded from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

The EPA is also proposing the use of a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment, based on the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents that may be released from the petitioned waste, once it is disposed.

DATES: The EPA is requesting public comments on this proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until April 5, 1999. Comments postmarked after the close of the comment period will be stamped ''late,'' and will not be considered in formulating a final decision.

Any person may request a hearing on this proposed decision by filing a request with Acting Director, Robert E. Hannesschlager, Multimedia Planning and Permitting Division, whose address appears below, by March 8, 1999. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the William Gallagher, Delisting Section, Multimedia Planning and Permitting Division (6PD–O), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A third copy should be sent to the Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78753. Identify your comments at the top with this regulatory docket number: ''F–97–TXDEL–OCCDEERPK.''

Requests for a hearing should be addressed to the Acting Director, Robert E. Hannesschlager, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

The RCRA regulatory docket for this proposed rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202 and is available for viewing in the EPA Freedom of Information Act Review Room on the 7th Floor from 9:00 a.m. to 4:00 p.m., Monday through

Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, contact Jon Rinehart, Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX 75202, (214) 665–6789.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in §§ 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3).

Individual waste streams may vary however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. *See* § 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the EPA to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous levels. *See* § 260.22(a), 42 U.S.C. § 6921(f), and the background documents for the listed wastes. Although wastes which are ''delisted'' (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains nonhazardous based on the hazardous waste characteristics.

In addition, mixtures containing listed hazardous wastes are also considered hazardous wastes and wastes derived from the treatment, storage, or disposal of listed hazardous waste. *See* §§ 261.3(a)(2)(iv) and (c)(2)(I), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the ''mixture/derived from'' rules and remanded them to the EPA on procedural grounds. *See Shell Oil Co.* v. *EPA.*, 950 F.2d 741 (D.C. Cir. 1991). On March 3, 1992, EPA reinstated the mixture and derived-from rules, and solicited comments on other ways to regulate waste mixtures and residues (57 *FR* 7628). These rules became final on October 30, 1992 (57 *FR* 49278). These references should be consulted for more information regarding mixtures derived from wastes.

B. Approach Used to Evaluate This Petition

Occidental Chemical's petition requests a delisting for listed hazardous waste. In making the initial delisting determination, the EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the EPA agreed with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) The EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantity of waste generated, and waste variability.

For this delisting determination, the EPA used such information gathered to identify plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D (solid, nonhazardous waste) landfill is the most reasonable, worse-case disposal scenario for Occidental Chemical's petitioned waste, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the EPA used a particular fate and transport model, the EPA Composite Model for Landfills (EPACML), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the disposal of Occidental Chemical's petitioned waste on human health and the environment. Specifically, the EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the health-based levels at an assumed risk of 10^{-6} used in delisting decision-making for the hazardous constituents of concern.

The EPA believes that this fate and transport model represents a reasonable worse-case scenario for disposal of the petitioned waste in a landfill, and that a reasonable worse-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of a reasonable worse-case scenario results in conservative values for the compliance-point concentrations and gives a high degree of confidence that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. In most cases, because (unless conditionally delisted), a delisted waste is no longer subject to hazardous waste control, the EPA is generally unable to predict, and does not presently control, how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model.

The EPA also considers the applicability of ground water

monitoring data during the evaluation of delisting petitions. In this case, the EPA determined that it would be inappropriate to request ground water monitoring data. Specifically, Occidental Chemical currently disposes of the petitioned waste (Rockbox Residue) generated at its facility in an off-site RCRA hazardous waste landfill (which is not owned/operated by Occidental Chemical). This landfill did not begin accepting this petitioned waste generated by the Occidental Chemical facility until 1991. This petitioned waste comprises a small fraction of the total waste managed in the unit. Therefore, the EPA, believes that any ground water monitoring data from the landfill would not be meaningful for an evaluation of the specific effect of this petitioned waste on ground water. Finally, there are presently no data from ground water monitoring wells available, therefore there is no data to evaluate.

From the evaluation of Occidental Chemical's delisting petition, a list of constituents was developed for the verification testing conditions. Proposed maximum allowable leachable concentrations for these constituents were derived by back-calculating from the delisting health-based levels through the proposed fate and transport model for a landfill management scenario. These concentrations (i.e., delisting levels) are part of the proposed verification testing conditions of the exclusion.

Similar to other facilities seeking exclusions, Occidental Chemical's exclusion (if granted) would be contingent upon the facility conducting analytical testing of representative samples of the petitioned waste at Deer Park. This testing would be necessary to verify that the treatment system is operating as demonstrated in the petition submitted on September 19, 1997. Specifically, the verification testing requirements would be implemented to demonstrate that the processing facility will generate nonhazardous waste (i.e., waste that meet the EPA's verification testing conditions). The EPA's proposed decision to delist waste from Occidental Chemical's facility is based on the information submitted in support of today's rule (i.e., description of the wastewater treatment system and analytical data from the Deer Park facility).

Finally, the HSWA specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all timely public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

Occidental Chemical Corporation, Deer Park, Texas 77536.

A. Petition for Exclusion

Occidental Chemical Corporation, located in Deer Park, Texas, petitioned the EPA for exclusion for 238 cubic yards of Rockbox Residue, per calendar year resulting from its hazardous waste treatment process. The resulting waste is presently listed, in accordance with § 261.3(c)(2)(I) (i.e., the derived from rule), as EPA Hazardous Waste No. K017, K019, and K020. The listed constituents of concern for these waste codes are listed in Table 1.

TABLE 1—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTEWATER STREAMS

Waste code	Basis for characteristics/listing
K019/K020	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K017	Epichlorohydrin, chloroethers, trichloropropane, dichloropropanols.

Occidental Chemical petitioned to exclude the Rockbox Residue, treatment residues because it does not believe that the petitioned waste meet the criteria for which it was listed. Occidental Chemical further believes that the waste is not hazardous for any other reason (i.e., there are no additional constituents or factors that could cause the wastes to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the HSWA. *See* § 222 of HSWA, 42 USC § 6921(f), and 40 CFR § 260.22(d) (2)–(4). Today's proposal to grant this petition for delisting is the result of the EPA's evaluation of Occidental Chemical's petition.

B. Background

On September 19, 1997, Occidental Chemical petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, an annual volume of Rockbox Residue, which are generated as a result of the treatment of offgases from onsite incinerators. Specifically, in its petition, Occidental Chemical requested that the EPA grant a standard exclusion for 238 cubic yards of Rockbox Residue, generated per calendar year.

In support of its petition, Occidental Chemical submitted: (1) Descriptions of its wastewater treatment processes and the incineration activities associated with petitioned wastes; (2) results of the total constituent list for 40 CFR part 264 Appendix IX volatiles, semivolatiles, and metals except for pesticides, herbicides, and PCBs; (3) results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals; (4) results for reactive sulfide, (5) results for reactive cyanide; (6) results for pH; (7) results of ignitability; (8) results of the total basis for dioxin and furan; and (9) results of dioxin and furan TCLP extract.

Occidental Chemical is an active plant that produces ethylene dichloride (EDC), and vinyl chloride monomer (VCM). The plant utilizes chlorine, ethylene, and oxygen as feedstock and utilizes two permitted, onsite RCRA incinerators to burn process vent gases, intermediate wastes generated during the production of EDC and VCM (K019, K020) and epichlorohydrin heavy ends (K017). These two incinerators have been in continuous operation since 1987. Occidental Chemical has previously classified one waste stream (Rockbox Residue) generated from the treatment of the offgas from the incinerators as hazardous based on the ''derived from'' rule in § 261.3(c)(2)(i).

The combustion products from the incinerators contain hydrochloric acid (HCl). Incinerator offgases are treated in the Incinerator Offgas Treatment System. In this system, the emissions are passed through absorption columns, dehumidifier columns, and caustic scrubbers to remove the HCl. Blowdown water from the dehumidifier columns and caustic scrubber columns are routed to the Rockbox Tank (the Rockbox) as the first step in neutralizing the HCl. Excess HCl from the aqueous HCl storage tanks is commingled with the blowdown water and routed to the Rockbox. The influent to Rockbox normally contains 2 to 3 percent HCl. At times when excess HCl is not produced, the influent to the Rockbox is

predominantly blowdown from the dehumidifier and caustic scrubber columns.

The Rockbox contains crushed limestone with small amounts of inert materials (silica oxide). These inert materials accumulate in the bottom of the Rockbox as the crushed limestone is utilized in the neutralization process. The accumulation of inert materials is the Rockbox Residue. The Rockbox Residue is a ''third generation'' waste since it is the residue of treating wastewater used to quench gaseous emissions from the incineration of listed wastes.

The pH of the effluent leaving the Rockbox is between 1 and 4. The effluent is passed through a primary pH adjustment tank where air is released into the water to remove carbon dioxide. Additionally, sodium hydroxide may be added to this tank. Mixing with air minimizes the formation of calcium carbonate precipitate upon introduction of caustic soda. The effluent is then passed through the secondary pH adjustment tank where caustic soda (sodium hydroxide) is added to raise the pH of the water to a pH between 7 and 9. The stream, consisting of water and calcium carbonate precipitant in suspension, flows through a clarifier where the sludge is settled out. The aqueous effluent from the clarifier tank is the Caustic Neutralized Wastewater.

Rockbox Residue is generated on a batch basis every one to two years. For the past two years (1995 and 1996), the Rockbox Residue was generated annually. This is probably due to a higher than average concentration of inerts in the limestone purchased for the Rockbox. The Rockbox Residue is disposed of in an offsite permitted hazardous waste landfill.

Occidental Chemical developed a list of constituents of concern from comparing a list of all raw materials used in the plant that could potentially appear in the petitioned waste with those found in 40 CFR Appendix IX Part 264, as well as dioxins and furans. The EPA has included the dioxins and furans to the list, due to the incineration of chlorinated compounds. Using the list of constituents of concern, Occidental analyzed the four composite samples for the total concentrations (i.e., mass of a particular constituent per mass of waste) of the volatiles and semivolatiles, and metals from Appendix IX. These four samples were also analyzed to determine whether the waste exhibited ignitable, corrosive, or reactive properties as defined under 40 CFR §§ 261.21, 261.22, and 261.23, including analysis for total constituent concentrations of cyanide, sulfide, reactive cyanide, and reactive sulfide. These four samples were also analyzed for Toxicity Characteristic Leaching Procedure (TCLP) concentrations (i.e., mass of a particular constituent per unit volume of extract) of all the volatiles, semivolatiles, and metals on the Appendix IX list. This list was developed based on the availability of test methods and process knowledge. Two sampling events were conducted, one in 1995 and one in 1996.

C. EPA Analysis

Occidental Chemical used SW–846 Methods 8260A, 8270B, 6010, 8290 to quantify the total constituent concentrations of 40 CFR, Part § 264 Appendix IX Volatiles (including 2-ethoxyethanol, chloroethylene, vinyldene chloride and trichloromethane), Appendix IX Semivolatiles (excluding PCBs, Pesticides, Herbicides) Appendix IX Metals, and Appendix IX Dioxins/Furans. Occidental Chemical used SW–846 Methods 9045, 9030, 9010, 1311, 9045 to quantify pH, 9030 Reactive Sulfide, and 9010 Reactive Cyanide. Occidental Chemical used SW–846 Methods 8260A, 8270B, 6010, 8290 to quantify the constituents from the TCLP extract. These analyses were performed on the petitioned waste: the Rockbox Residue. The Rockbox Residue, does not meet the definitions for reactivity and corrosivity as defined by §§ 261.22 and 261.23. Table 2 presents the maximum total constituent and leachate concentrations for the Rockbox Residue.

TABLE 2—MAXIMUM TOTAL CONSTITUENT AND LEACHATE CONCENTRATIONS ROCKBOX RESIDUE [1]

Constituents	Total constituent analyses (mg/kg)	Leachate analyses (mg/l)
Acetone	0.1	<0.1
Dichloromethane	0.007	0.11
Xylene	0.011	0.04
Dimethylphthalate	0.8	0
2,3,7,8-TCDD Equivalent	0.0000781	0.00000000531
Arsenic	2.0	<0.1
Barium	4.5	0.13
Chromium	1.0	0.13
Copper	1.6	<0.25
Lead	1.0	<0.07
Tin	15	<0.10
Vanadium	8.1	<0.50
Zinc	ND	<0.4
Reactive Sulfide	<50	
Reactive Cyanide	<10	
pH	8.3	

<Denotes that the constituent was not detected at the detection limit specified in the table.

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

Occidental Chemical used SW–846 Methods 8260A and 8270B to quantify the total constituent concentrations of 54 volatile and 117 semivolatile organic compounds, in the Rockbox Residue. This suite of constituents included all of the nonpesticide organic constituents listed in § 261.24. Also, Occidental Chemical used SW–846 Methods 8260A and 8270B to quantify the leachable concentrations of 54 volatile and 117 semivolatile organic compounds, respectively, in the Rockbox Residue, following extraction by SW–846 Method 1311 (TCLP). This suite of constituents included all of the organic constituents listed in § 261.24 (except the pesticides). In addition, the Rockbox Residue, was analyzed for TCLP metals.

Occidental Chemical submitted a signed certification stating that, based

on projected annual waste generation, the maximum annual generation rate will be 238 cubic yards of Rockbox Residue. The EPA reviews a petitioner's estimates and, on occasion, has requested a petitioner to reevaluate the estimated waste volume. The EPA accepted Occidental Chemical's certified estimate of 238 cubic yards of Rockbox Residue. The EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The EPA, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting an exclusion.

D. EPA Evaluation

The EPA considered the appropriateness of alternative waste management scenarios for Occidental Chemical's Rockbox Residue. The EPA decided, based on the information provided in the petition, that disposal of the Rockbox Residue in a municipal solid waste landfill is the most reasonable, worse-case scenario for this waste, for the Rockbox Residue. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The EPA, therefore, evaluated Occidental Chemical's petitioned wastes using the modified EPA Composite Model for Landfills/Surface Impoundments (EPACML) which predicts the potential for ground water contamination from wastes that are landfilled/placed in a landfill. *See* 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991) and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worse-case contaminant levels in ground water at a compliance point (i.e., a receptor well serving as a drinking-water supply). Specifically, the model estimated the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from ground water recharge for a specific volume of waste. The EPA requests comments on the use of the EPACML as applied to the evaluation of Occidental Chemical's petitioned waste (Rockbox Residue,).

For the evaluation of Occidental Chemical's petitioned waste, the EPA used the EPACML to evaluate the mobility of the hazardous constituents detected in the extract of samples of Occidental Chemical's Rockbox Residue. Typically, the EPA uses the maximum annual waste volume to derive a petition-specific DAF. The DAFs are currently calculated assuming an ongoing process generates wastes for 20 years.

The DAF for the waste volume of Rockbox Residue is 238 cubic yards/year assuming 20 years is 100.

The EPA's evaluation of the Rockbox Residue using a DAF of 100, a maximum waste volume estimate of 238 cubic yards, and the maximum reported TCLP concentrations (see Table 2), yielded compliance point concentrations (see Table 5) that are below the current health based levels.

TABLE 5—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS ROCKBOX RESIDUE

Constituents	Compliance point concentrations (mg/l) [1]	Levels of concern (mg/l) [2]
Acetone	0.002	4.0
2,3,7,8-TCDD Equivalent	0.000000000000252	0.0000000006
Dichloromethane	0.0048	0.01
Barium	0.00119	2.0
Tin	0.001	2.1

[1] Using the maximum TCLP leachate concentration, based on a DAF of 100 for a maximum annual volume of 238 Cubic yards.
[2] See ''Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions,'' May 1996, located in the RCRA Public Docket for today's notice.

The maximum reported or calculated leachate concentrations of bromoform, chlorodibromomethane, dichloromethane, ethylbenzene, 2,3,7,8-TCDD Equivalent, barium, chromium, and selenium in the Rockbox Residue yielded compliance point concentrations well below the health based levels used in the delisting decisionmaking. The EPA did not evaluate the mobility of the remaining constituents (e.g., acetone, bromodichloromethane, copper, lead) from Occidental Chemical's waste because they were not detected in the leachate using the appropriate analytical test methods (see Table 2). As explained above, the EPA does not evaluate nondetectable concentrations of a constituent of concern in its modeling efforts if the nondetectable value was obtained using the appropriate analytical method. The EPA believes the TCLP is the appropriate analytical method for use in evaluating this petition because of the waste streams due to its neutral pH of 8, and its knowledge of the disposal scenarios used. The EPA believes that the TCLP will adequately predict the leachability of constituents in the waste.

The EPA concluded, after reviewing Occidental Chemical's processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by products in Occidental Chemical's waste. In addition, on the basis of explanations and analytical data provided by Occidental Chemical, pursuant to § 260.22, the EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. *See* §§ 261.21, 261.22, and 261.23, respectively.

During the evaluation of Occidental Chemical's petition, the EPA also considered the potential impact of the petitioned waste via non-ground water routes (i.e., air emission and surface runoff). With regard to airborne dispersion in particular, the EPA believes that exposure to airborne contaminants from Occidental Chemical's petitioned wastes is unlikely. The open tank evaluation was not done because the Rockbox is essentially a closed container. Therefore, no appreciable air releases are likely from Occidental's waste under any likely disposal conditions. There is an air study that was performed and the results have been mentioned in the comments that have been received in

other petitions. No linear comparison between risk levels and the concentrations of the waste have been made. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Occidental Chemical's waste in an open landfill. The results of this worse case analysis indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from Occidental Chemical's Rockbox Residue. A description of the EPA's assessment of the potential impact of Occidental Chemical's waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for today's proposed rule.

The EPA also considered the potential impact of the petitioned wastes via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the run-off will tend to be lower than the levels in the TCLP leachate analyses reported in today's notice due to the aggressive acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated the potential impacts on surface water if Occidental Chemical's waste were released from a municipal solid waste landfill through runoff and erosion. *See* the RCRA public docket for today's proposed rule. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below the EPA chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that Occidental Chemical's Rockbox Residue waste is not a substantial present or potential hazard to human health and the environment via the surface water exposure pathway.

E. Conclusion

The EPA believes that the descriptions of the Occidental Chemical hazardous waste process and analytical characterization, in conjunction with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized. Thus, EPA believes that Occidental Chemical's petition for a conditional exclusion of the Rockbox Residue should be granted. The EPA believes the data submitted in support of the petition show Occidental Chemical's process can render the Rockbox Residue, nonhazardous. The EPA has reviewed the sampling procedures used by Occidental Chemical and has determined they satisfy EPA criteria for collecting representative samples of the variations in constituent concentrations in the Rockbox Residue. The data submitted in support of the petition show that constituents in Occidental Chemical's waste are presently below health-based levels (HBLs) used in the delisting decision-making and would not pose a substantial hazard to the environment. The EPA believes that Occidental Chemical has successfully demonstrated that the Rockbox Residue, is nonhazardous.

The EPA therefore, proposes to grant a exclusion to the Occidental Chemical Corporation, located in Deer Park, Texas, for the Rockbox Residue, described in its petition. The EPA's decision to exclude this waste is based on descriptions of the incineration and the wastewater treatment activities associated with the petitioned waste and characterization of the Rockbox Residue. If the proposed rule is finalized, the petitioned waste will no longer be subject to regulation under Parts 262 through 268 and the permitting standards of Part 270. The EPA therefore, proposes to grant an exclusion to the Occidental Chemical Corporation, located in Deer Park, Texas for the Rockbox Residue described in the petition.

F. Verification Testing Conditions

(1) *Delisting Levels:* All leachable concentrations for those constituents must not exceed the following levels (ppm). Constituents must be measured in the waste leachate by the method specified in 40 CFR § 261.24.

(A) Rockbox Residue

(i) Inorganic Constituents—Barium-100; Chromium-5.0; Copper-130; Lead-1.5; Selenium-1.0; Tin-210; Vanadium-30; Zinc-1,000

(ii) Organic Constituents—Acetone-400; Bromodichloromethane-0.14; Bromoform-1.0; Chlorodibromethane-0.1; Chloroform-1.0; Dichloromethane-1.0; Ethylbenzene-70; 2,3,7,8-TCDD Equivalent-0.0000006

This paragraph provides the levels of constituents which Occidental Chemical must test the leachate from the Rockbox Residue, below which these waste would be considered non-hazardous. The exclusion is effective when it is signed, but the disposal can not be implemented until the verification sampling is completed. If these constituent levels are exceeded then that waste is considered to be hazardous and must be managed as hazardous waste. If the annual testing of the waste does not meet the delisting requirements described in Paragraph 1, the facility must notify the Agency according to Paragraph 6. The exclusion will be suspended until a decision is reached by the Agency. The facility shall provide sampling results which support the rationale that the delisting exclusion should not be withdrawn. The EPA selected the set of inorganic and organic constituents specified after reviewing information about the composition of the waste, descriptions of Occidental Chemical's treatment process, previous test data provided for the waste and the respective health-based levels used in delisting decision-making. The EPA established the proposed delisting levels for this paragraph by back-calculating the Maximum Allowable Leachate (MALs) concentrations from the health-based levels for the constituents of concern using the EPACML chemical-specific DAF of 100. (See, previous discussions in Section D—*Agency Evaluation* i.e., MAL = HBL × DAF). These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste.

(2) *Waste Holding and Handling:* Occidental Chemical must store in accordance with its RCRA permit, or continue to dispose of as hazardous all Rockbox Residue generated, until the verification testing described in Condition (3)(A) and (B), as appropriate, is completed and valid analyses demonstrate that condition (3) is satisfied. If the levels of constituents measured in the samples of the Rockbox Residue, do not exceed the levels set forth in Condition (1), then the waste is

nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed any of the delisting levels set in Condition (3), the waste generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA.

The purpose of this paragraph is to ensure that any Rockbox Residue which might contain hazardous levels of inorganic and organic constituents are managed and disposed of in accordance with Subtitle C of RCRA. Holding the Rockbox Residue until characterization is complete will protect against improper handling of hazardous material. If the EPA determines that the data collected under this condition do not support the data provided for in the petition, the exclusion will not cover the petitioned waste.

(3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, Occidental Chemical may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Occidental Chemical must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B).

(A) *Initial Verification Testing:* (i) When the Rockbox unit is decommissioned for cleanout after the final exclusion is granted, Occidental Chemical must collect and analyze composites of the Rockbox Residue. The waste must be sampled after each decommissioning. Two composites must be composed of representative grab samples collected from the Rockbox unit. The waste must be analyzed, prior to disposal, for all of the constituents listed in Paragraph 1. No later than 90 days after this exclusion becomes final, Occidental Chemical must report the operational and analytical test data, including quality control information.

If the EPA determines that the data from the initial verification period demonstrates the treatment process is effective, Occidental Chemical may request that EPA allow it to perform verification testing on a quarterly basis. If approved in writing by EPA, then Occidental Chemical may begin verification testing quarterly.

The EPA believes that an initial period of 40 days is adequate for a facility to collect sufficient data to verify that the data provided for the Rockbox Residue, in the 1997 petition, is representative of the waste to be delisted. If the EPA determines that the data collected under this condition do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the EPA determines that the data from the initial verification period demonstrates that the treatment process is effective, EPA will notify Occidental Chemical in writing that the testing conditions in (3)(A)(i) may be replaced with the testing conditions in (3)(B).

(B) *Subsequent Verification Testing:* Following written notification by EPA, Occidental Chemical may substitute the testing conditions in (3)(B) for (3)(A)(i). Occidental Chemical must continue to monitor operating conditions, and analyze samples representative of each quarter of operation during the first year of waste generation. The samples must represent the waste generated over one quarter.

The EPA believes that the concentrations of the constituents of concern in the Rockbox Residue, may vary somewhat over time. As a result, in order to ensure that Occidental Chemical's treatment process can effectively handle any variation in constituent concentrations in the waste, the EPA is proposing a subsequent verification testing condition. The proposed subsequent testing would verify that the incinerator offgas system is operated in a manner similar to its operation during the initial verification testing and that the Rockbox Residue, does not exhibit unacceptable levels of toxic constituents. Therefore, the EPA is proposing to require Occidental Chemical to analyze representative samples of the Rockbox Residue, on a quarterly basis during the first year of waste generation (commencing on the anniversary date of the final exclusion) as described in Condition (3)(B).

(C) *Termination of Organic Testing:* Occidental Chemical must continue testing as required under Condition (3)(B) for organic constituents specified in Condition (1)(A)(i), until the analyses submitted under Condition (3)(B) show a minimum of two consecutive quarterly samples below the delisting levels in Condition (1)(A)(i), Occidental Chemical may then request that quarterly organic testing be terminated. After EPA notifies Occidental Chemical in writing, the company may terminate quarterly organic testing. Following termination of the quarterly testing, Occidental Chemical must continue to test a representative composite sample for all constituents listed in Condition (1) on an annual basis (no later than twelve months after final exclusion).

The EPA is proposing to terminate the subsequent testing conditions for organics during the first year as allowed in Condition (1)(C) after Occidental Chemical has demonstrated the delisting levels for the waste are consistently met. Annual testing requires the full list of components in Paragraph 1. If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, the facility must notify the Agency according to the requirements in Paragraph 6. The exclusion will be suspended until a decision is reached by the Agency. The facility shall provide sampling results which support the rationale that the delisting exclusion should not be withdrawn. In order to confirm that the characteristics of the waste do not change significantly over time, Occidental Chemical must continue to analyze a representative sample of the waste for organic constituents on an annual basis (no later than twelve months after the final exclusion). If Occidental Chemical changes operating conditions as described in Condition (4), then Occidental Chemical must reinstate all testing in Condition (1)(A), pending a new demonstration under this condition for termination. Occidental Chemical must continue organic testing of the Rockbox Residue for that waste to be excluded.

(4) *Changes in Operating Conditions:* If Occidental Chemical significantly changes the process described in its petition or implements any processes which generate(s)the waste and which may or could affect the composition or type waste generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process), must notify the EPA in writing and may no longer handle the wastes generated from the new process, as nonhazardous until the wastes meet the delisting levels set in Condition (1) and it has received written approval to do so from EPA.

Condition (4) would allow Occidental Chemical the flexibility of modifying its processes (e.g., changes in equipment or change in operating conditions) to improve its treatment process. However, Occidental Chemical must demonstrate the effectiveness of the modified process and request approval from the EPA. Wastes generated during the new process demonstration must be managed as a hazardous waste until written approval has been obtained and Condition (3) is satisfied.

(5) *Data Submittals:* The data obtained through Paragraph 3 must be submitted to Mr. William Gallagher, Chief, Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code (6PD-O), within the time period specified. Records of operating conditions and analytical data from Condition (3) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All

data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. § 1001 and 42 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

To provide appropriate documentation that Occidental Chemical's facility is properly treating the waste, all analytical data obtained through Condition (3), including quality control information, must be compiled, summarized, and maintained on site for a minimum of five years. Condition (5) requires that these data be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Texas.

If made final, the proposed exclusion will apply only to 238 cubic yards of Rockbox Residue, generated annually at the wastewater system at the Occidental Chemical facility after successful verification testing. Except as described in Condition (4), the facility would be required to submit a new exclusion if the treatment process specified for the Incinerator Offgas Treatment System is significantly altered. Occidental Chemical would be required to file a new delisting petition for any new manufacturing or production process(es), or significant changes from the current process(es) described in its petition which generates the waste or which may or could affect the composition or type of waste generated. The facility must manage any of the waste in excess of 238 cubic yards of Rockbox Residue, generated from a changed process as hazardous until a new exclusion is granted.

Although management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

(6) *Reopener Language*

(a) If Occidental Chemical discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then Occidental Chemical must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate within 10 days of discovering that condition.

(b) Upon receiving information including that described in paragraph (a), regardless of its source, the Regional Administrator or his delegate will determine whether the reported condition requires further action. Further action may include revoking the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment.

The purpose of Paragraph 6 is to require Occidental Chemical to disclose new or different information related to a condition at the facility or disposal of the waste if it had or has bearing on the delisting. This will allow EPA to reevaluate the exclusion if new or additional information is provided to the Agency from any source which indicates that information in which EPA's decision was based was incorrect or circumstances have changed such that information is no longer correct or would cause EPA to deny the petition if then presented. Further, although this provision expressly requires Occidental Chemical to report differing site conditions or assumptions used in the petition within 10 days of discovery, if EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions located at § 268.6.

The EPA believes that it has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. § 551 (1978) *et seq.* (APA), to reopen a delisting decision if new information is received that calls into question the assumptions underlying the delisting and believes that a clear statement of its authority in the context of delistings is merited in light of Agency experience. (See, e.g. Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste did not leach in the actual disposal site as it had been modeled thus leading the Agency to repeal the delisting.) In the meantime, in the event that an immediate threat to human health and the environment presents itself, EPA will continue to address such situations on a case-by-case basis and where necessary, will make a good cause finding to justify emergency rulemaking. *See* APA § 553 (b).

(7) *Notification Requirements:* Occidental Chemical must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. The one-time written notification must be updated if the delisted waste is shipped into a different disposal facility. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

IV. Effective Date

This rule, if made final, will become effective immediately upon final publication. The Hazardous and Solid Waste Amendments of 1984 amended § 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of § 3010, EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the APA, 5 U.S.C. § 553(d).

V. Regulatory Impact

Under Executive Order (EO) 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions. The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling a facility to manage its waste as nonhazardous. There is no additional impact therefore, due to today's proposed rule. Therefore, this proposal

would not be a significant regulation and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. 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 this is not an economically significant regulatory action as defined by E.O. 12866 and the environmental health or safety risks addressed by this action do not have a disproportionate effect on children.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required however if the Administrator or delegated representative certifies that the rule will not have any impact on small entities.

This rule if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. 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 that 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 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 meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their 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.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This rule, if promulgated, will not have any adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovermental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector. The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

XI. Intergovernmental Partnership

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

List of Subjects In 40 CFR Part 261

Hazardous Waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: February 10, 1999.

Robert E. Hannesschlager,

Acting Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Tables 1 and 2, of Appendix IX of part 261 it is proposed to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * *
Occidental Chemical.	Deer Park, Texas ..	Rockbox Residue, (at a maximum generation of 238 cubic yards per calendar year) generated by Occidental Chemical using the wastewater treatment process to treat the Rockbox Residue, (EPA Hazardous Waste No. F025, F001, F003, and F005) generated at Occidental Chemical. Occidental Chemical must implement a testing program that meets the following conditions for the exclusion to be valid: (1) *Delisting Levels:* All leachable concentrations for those constituents must not exceed the levels (ppm). Constituents must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. (A) Rockbox Residue—(i) Inorganic Constituents Barium-100; Chromium-5; Copper-130; Lead-1.5; Selenium-1; Tin-2,100; Vanadium-30; Zinc-1,000 (ii) Organic Constituents Acetone-400; Bromodichloromethane-0.14; Bromoform-1.0; Chlorodibromethane-0.1; Chloroform-1.0; Dichloromethane-1.0; Ethylbenzene-7,000; 2,3,7,8-TCDD Equivalent-0.00000006 (2) *Waste Holding and Handling:* Occidental Chemical must store in accordance with its RCRA permit, or continue to dispose of as hazardous waste all Rockbox Residue, generated, until the verification testing described in Condition (3)(A) and (3)(B), as appropriate, is completed and valid analyses demonstrate that condition (3) is satisfied. If the levels of constituents measured in the samples of the Rockbox Residue, do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed any of the delisting levels set in Condition (3), the waste generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA. (3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, Occidental Chemical may replace the testing required in condition (3)(A) with the testing required in Condition (3)(B). Occidental Chemical must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B). (A) *Initial Verification Testing:* (i) During the first 40 operating days when the Rockbox unit is decommissioned for cleanout, after the final exclusion is granted, Occidental Chemical must collect and analyze composites of the Rockbox Residue. The waste must be sampled after each decommissioning. Two composites must be composed of representative grab samples collected from the Rockbox unit. The waste must be analyzed, prior to disposal, for all of the constituents listed in Paragraph 1. No later than 90 days after this exclusion becomes final, Occidental Chemical must report the operational and analytical test data, including quality control information. (B) *Subsequent Verification Testing:* Following written notification by EPA, Occidental Chemical may substitute the testing conditions in (3)(B) for (3)(A)(i). Occidental Chemical must continue to monitor operating conditions, and analyze samples representative of each quarter of operation during the first year of waste generation. The samples must represent the waste generated over one quarter. (C) *Termination of Organic Testing:* Occidental Chemical must continue testing as required under Condition (3)(B) for organic constituents specified in Condition (1)(A)(i), until the analyses submitted under Condition (3)(B) show a minimum of two consecutive quarterly samples below the delisting levels in Condition (1)(A)(i), Occidental Chemical may then request that quarterly organic testing be terminated. After EPA notifies Occidental Chemical in writing that quarterly testing may be terminated. Following termination of the quarterly testing, Occidental Chemical must continue to test a representative composite sample for all constituents listed in Condition (1) on an annual basis (no later than twelve months after the final exclusion).

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(4) *Changes in Operating Conditions:* If Occidental Chemical significantly changes the process described in its petition or implements any processes which generate(s) the waste and which may or could affect the composition or type waste generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process), must notify the EPA in writing and may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in Condition (1) and it has received written approval to do so from EPA. (5) *Data Submittals:* The data obtained through Paragraph 3 must be submitted to Mr. William Gallagher, Chief, Region 6 Delisting Program, U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–O) within the time period specified. Records of operating conditions and analytical data from Condition (3) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 USC § 1001 and 42 USC § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) *Reopener Language*—(a) If Occidental Chemical discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then Occidental Chemical must report any information relevant to that condition, in writing, to the Regional Administrator or his delegate within 10 days of discovering that condition. (b) Upon receiving information described in paragraph (a), from any source the Regional Administrator or his delegate will determine whether the reported condition requires further action. Further action may include revoking the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment. (7) *Notification Requirements:* Occidental Chemical must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Occidental Chemical	Deer Park, Texas ..	Rockbox Residue, (at a maximum genearation of 238 cubic yards per calendar year) generated by Occidental Chemical using the wastewater treatment process to treat the Rockbox Residue, (EPA Hazardous Waste No. K019, K020. Occidental Chemical must implement a testing program that meets conditions found in Table 1. Wastes Excluded From Non-Specific Sources for the petition to be valid.

[FR Doc. 99–4160 Filed 2–18–99; 8:45 am]
BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 64, No. 33
Friday, February 19, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Helicopter Landing Tours on the Juneau Icefield EIS 2000, Tongass National Forest, Chatham Area, Juneau Ranger District, Juneau, Alaska

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental impacts of authorizing helicopter landing tours on the icefield adjacent to Juneau, Alaska. The proposed action is to issue special use permits (2000–2004) authorizing helicopter tour companies to land on the Juneau Icefield at specified locations and conduct tours. In addition to the regular glacier tours, this EIS will also analyze the effects of dogsled tours, glacier trekking tours, and a combined fixed-wing/helicopter tour that would land at the lake at Antler Glacier. The majority of use would occur between May and September of each year. Tours would originate at private heliports and helicopter flight paths would transit a variety of private and municipal lands prior to entering the National Forest.

The proposed action would maintain the authorized helicopter landings on the Juneau Icefield at the 1999 level of 19,039 landings. The Forest Service is seeking information and comments from Federal, State, and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action.

DATES: Comments concerning the scope of the analysis should be received in writing by March 9, 1999. A public meeting will be held at the Juneau Ranger District on February 25 from 2:00 p.m. until 8:00 p.m. District staff will be available at this open house to explain the project, accept your comments, and answer questions.

ADDRESSES: Written comments and suggestions concerning the analysis should be sent to Roger Birk, Environmental Coordinator, Juneau Ranger District Office, 8465 Old Dairy Road, Juneau, Alaska 99801.

FOR FURTHER INFORMATION CONTACT: Roger Birk, Environmental Coordinator, Juneau Ranger District Office, 8465 Old Dairy Road, Juneau, Alaska 99801, (907) 586–8800, fax number (907) 586–8808. Email may be sent to rbirk/r10@fs.fed.us.

SUPPLEMENTARY INFORMATION: The purpose and need for the proposed action is to meet public demand for quality guided services which provide safe access to remote locations on the Juneau Icefield. Meeting this demand includes providing for visitor safety and an appropriate balance between commercial guided recreation opportunities and non-commercial, non-guided recreation opportunities without unacceptable impacts to other forest users and resources.

Peter Griffin, Juneau District Ranger, Tongass National Forest, Chatham Area, is the deciding official. The decision to be made is whether or not to issue special use permits for helicopter landing tours as requested, and if permits are issued, decide the levels to be authorized and the mitigation measures, if any, that will be required.

The no action and proposed action alternatives will be considered in the EIS as well as other alternatives which address significant issues and satisfy the purpose and need for the action.

Preliminary issues that have been identified include helicopter noise disturbance to residential areas, wildlife, and ground-based recreation users.

In 1992 an environmental assessment and in 1995 an environmental impact statement were prepared to analyze the effects of these tours. Comments from the EA and EIS were used to identify issues for this EIS. Comments will be accepted throughout the EIS process but, to be most useful, should be received by March 9, 1999.

The draft environmental impact statement should be available for review by August 1, 1999. The comment period of the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, #533 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage that are not raised until after the completion of the final environmental impact statement may be waived or dismissed by the courts. City of *Angoon* v. *Hodel,* 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1335, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate at the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The Final EIS and Record of Decision is expected to be released in November, 1999. The Juneau District Ranger, Chatham Area, Tongass National Forest will, as the responsible official for the EIS, make a decision regarding this proposal considering the comments, responses, and environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies. The decision and

supporting reasons will be documented in the Record of Decision.

Dated: February 3, 1999.

John H. Favro,

Acting District Ranger.

[FR Doc. 99–4091 Filed 2–18–99; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 22, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 23, and November 16, 1998 and January 4, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 F.R. 56906, 63670 and 64 F.R. 76) of proposed additions to the Procurement List.

The following comments pertain to Laundry Service, Fleet and Industrial Supply Center, Norfolk, New England Regional Requirements for the following locations: New London Naval Submarine Base, Connecticut; Newport Naval Education and Training Center, Rhode Island; and Winter Harbor Naval Security Group, Maine.

Comments were received from two of the three current contractors for the service and from the Congressional representatives of these two contractors. Both contractors objected to the possibility of losing their contracts, which they noted are an important part of their sales and a dependable source of revenue, in one case for almost nine years. The other contractor noted that its president has a disability, and the other indicated that some of its employees have disabilities. The latter contractor indicated that losing this contract would require it to terminate a number of its employees. The two Members of Congress seconded the comments made by their respective constituents.

The Committee understands the concerns of the commenting contractors, but is also aware that it has a statutory mission to create jobs for people with severe disabilities. Such individuals have an unemployment rate well in excess of other groups, such as the contractor employees who may be displaced by the Committee's action, but can more easily find replacement employment than the people with disabilities which the Committee's action will employ. The percentage of sales which each contractor would lose is below the level which the Committee normally considers to be severe adverse impact, even taking into account the number of years the firms have been performing the laundry services.

With respect to one contractor's statement that his firm employs persons with disabilities, the Committee noted that those individuals do not meet the statutory definition of severe disabilities (other than blindness) used by the Committee. Under that definition, a person must not only have a disability, but be currently incapable of competitive employment as a result of the disability. Thus, the employees with disabilities whom the contractors mentioned are, like their fellow workers without disabilities, in a better position to find other employment than the individuals with severe disabilities who will benefit from the Committee's action. Accordingly, the Committee has concluded that the addition of this service to the Procurement List is not likely to have a severe adverse impact on the contractors or their employees.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Odor Barrier Waste Storage Container
7240–00–NIB–0001
7240–00–NIB–0002

Services

Laundry Service, Fleet and Industrial Supply Center, Norfolk

New England Regional Requirements for the following locations:

New London Naval Submarine Base, Connecticut
Newport Naval Education and Training Center, Rhode Island
Winter Harbor Naval Security Group Activity, Maine

Mail and Messenger Service, US Army Test and Evaluation Command, Aberdeen Proving Ground, Aberdeen, 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.

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–4185 Filed 2–18–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 22, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and 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 commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Paper, Tabulating Machine
7530–00–800–0996
(Requirements of Burlington, New Jersey only)
NPA:
Arizona Industries for the Blind, Phoenix, Arizona
Lighthouse for the Blind, St. Louis, Missouri
Blind Work Association, Binghamton, New York
Tarrant County Association for the Blind, Fort Worth, Texas

Meal Kits
8970–01–E59–0239A
8970–01–E59–0240A
8970–01–E59–0241A
8970–01–E59–0242A
8970–01–E59–0243A
8970–01–E59–0244A
8970–01–E59–0245A
8970–01–E59–0239B
8970–01–E59–0240B
8970–01–E59–0241B
8970–01–E59–0242B
8970–01–E59–0243B
8970–01–E59–0244B
8970–01–E59–0239C
8970–01–E59–0240C
8970–01–E59–0241C
8970–01–E59–0242C
(100% of the requirement of the U.S. Property and Fiscal Officer for Louisiana, New Orleans, Louisiana)
NPA: The Meadows Center for Opportunity, Inc., Edmond, Oklahoma

Services

Grounds Maintenance, Shaw Air Force Base, South Carolina
NPA: Sumter County Disabilities and Special Needs Board, Sumter, South Carolina
Mail and Messenger Service, Security Assistance Management Directorate (SAMD), Buildings 7611, 7612 and 7613, Redstone Arsenal, Alabama
NPA: Huntsville Rehabilitation Foundation, Huntsville, Alabama
Mailroom Operation, U.S. Coast Guard Yard, 2401 Hawkins Point Road, Baltimore, Maryland
NPA: Goodwill Industries of the Chesapeake, Inc., Baltimore, Maryland

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–4186 Filed 2–18–99; 8:45 am]

BILLING CODE 6353–01–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–846]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 19, 1999.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, John Totaro, LaVonne Jackson or Keir Whitson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4243, (202) 482–1374, (202) 482–0961, and (202) 482–1394, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1998).

Preliminary Determination

We preliminarily determine that Hot-Rolled Flat-Rolled Carbon-Quality Steel Products (''hot-rolled steel'') from Japan is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

On October 15, 1998, the Department initiated antidumping duty investigations of imports of hot-rolled steel from Brazil, Japan, and the Russian Federation. *See Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, Japan, and the Russian Federation,* 63 FR 56607 (October 22, 1998) (*Initiation*). Since the initiation of this investigation the following events have occurred:

The Department set aside a period for all interested parties to raise issues regarding product coverage. Throughout the month of November, the Department received numerous filings from respondents and other interested parties proposing amendments to the scope of these investigations. On January 6, 1999 and January 27, 1999, petitioners (Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Ispat Inland Steel, LTV Steel Company, Inc., National Steel Corporation, California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel, Inc., IPSCO Steel Inc., Steel Dynamics, Weirton Steel Corporation, the Independent Steelworkers Union, and the United Steelworkers of America) filed letters agreeing to amend the scope of these investigations to exclude those products for which Itochu International, Inc., Nippon Steel Corp., and others had requested exclusion (*see* Scope Memorandum to Joseph A. Spetrini, February 12, 1999).

On October 22, 1998, the Department requested comments from petitioners and respondents regarding the criteria to be used for model matching purposes. On October 22 and 27, 1998, petitioners and respondents (Companhia Siderurgica Nacional, Companhia Siderurgica Paulista, Usinas Siderurgicas de Minas Gerais, Nippon Steel Corporation, NKK Corporation, Kawasaki Steel, Sumitomo Metal Industries, Ltd., and Kobe Steel Ltd.) submitted comments on our proposed model-matching criteria.

On November 16, 1998, the United States International Trade Commission (''ITC'') notified the Department of its affirmative preliminary finding of threat of material injury in this case. Additionally, on November 25, 1998, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from Japan (63 FR 65221). On October 19, 1998, the Department issued section A of an antidumping questionnaire to Nippon Steel Corporation (''NSC''), NKK Corporation (''NKK''), Kawasaki Steel Corporation (''KSC''), Sumitomo Metal Industries (''Sumitomo''), Kobe Steel, Ltd. (''Kobe''), and Nisshin Steel Co. Ltd. (''Nisshin''). On October 30, 1998, the Department issued a memorandum which identified the respondents whose sales the Department would examine for purposes of this investigation. (*See* Respondent Selection section, below.) As a result of this decision, on October 30, 1998, the Department issued sections B–E of an antidumping questionnaire to NSC, NKK, and KSC (the chosen ''respondents''); the remaining three companies were excused from responding to the section A questionnaires the Department had sent them. Nevertheless, on November 12, 1998, Nisshin submitted a letter stating that it had not exported subject merchandise to the United States during the period of investigation (''POI'').

On November 16, 1998, we received section A questionnaire responses from NSC, NKK, and KSC. Petitioners filed comments on NSC's, NKK's, and KSC's section A questionnaire responses on November 30, 1998 and December 1, 1998. We issued supplemental questionnaires for section A to NSC, NKK, and KSC on December 4, 1998. On December 11, 1998, we issued a letter to respondents informing them that the Department would consider these supplemental questions for section A to have been issued on January 4, 1999, in order to adhere to the schedule provided to all interested parties at the time of initiation. On December 21, 1998, we received responses to sections B, C, and D of the questionnaire from NSC, NKK, and KSC. Petitioners filed comments on NSC's, NKK's, and KSC's section B–D questionnaire responses on December 28, 1998. We issued supplemental questionnaires for sections B, C and D to NSC, NKK, and KSC on January 4, 1999, and received responses to these questionnaires on January 25, 1999.

In addition, on November 10, 1998, KSC requested to be excused from responding to section E (''Further Manufacturing'') of the Department's questionnaire due to certain problems associated with obtaining the requisite information. After a review of the material placed on the record, the Department instructed KSC on January 4, 1999, to respond to section E of the Department's questionnaire. However, on January 25, 1999, instead of responding to section E of the Department's questionnaire, KSC argued that it was still unable to obtain the requested information and reiterated its request to be excused from providing the further manufactured sales in the United States. With regard to NSC and NKK, although both companies were sent section E of the questionnaire, both companies responded by stating that they did not perform any further manufacturing operations on imports of subject merchandise.

In the petition filed on September 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of hot-rolled steel from Brazil, Japan, and the Russian Federation. On November 23, 1998, in the investigations of Japan and the Russian Federation, the Department issued its preliminary critical circumstances determination (63 FR 65750 November 30, 1998). In these determinations, the Department preliminarily determined that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of hot-rolled steel from Japan and the Russian Federation.

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations. Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.*, ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30—0.50%	0.50–0.70%	0.20—0.40%	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.16% ..... Mo ..... 0.21% Max	0.70–0.90%	0.025% Max	0.006% Max	0.30—0.50%	0.50–0.70%	0.25% Max	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14% ..... V(wt.) ..... 0.10 Max	1.30–1.80% Cb 0.08% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

• Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.15% Max ..... Nb ..... 0.005% Min	1.40% Max Ca Treated	0.025% Max Al 0.01–0.07%	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses > 0.148 inches; Tensile Strength = 80,000 psi minimum.

• Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² and an elongation percentage ≥ 25 percent for thicknesses of 2mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

The merchandise subject to these investigations is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The POI is July 1, 1997 through June 30, 1998.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) a sample of exporters,

producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

After consideration of the complexities expected to arise in this proceeding (with respect to each respondent) and the resources available to the Department, we determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. Instead, we found that, given our resources, we would be able to investigate the Japanese producers/exporters with the greatest export volume, as identified above. These companies accounted for more than 90 percent of all known exports of the subject merchandise during the POI. For a more detailed discussion of respondent selection in this investigation, see *Respondent Selection Memorandum,* dated October 30, 1998.

Date of Sale

For its home market and U.S. sales, NSC reported the date of shipment, NKK reported the date of shipment for home market sales, and date of invoice for U.S. sales, and KSC reported the date of invoice as the date of sale for both U.S. and home market sales. NSC, NKK, and KSC all stated that the invoice/shipment date best reflects the date on which the material terms of sale are established and that price and/or quantity can and do change between order confirmation date and invoice/shipment date. Petitioners, however, have alleged that the sales documentation provided by respondents indicates that the order confirmation date appears to be the date when the material terms of sale are set for a majority of these respondents' sales of hot-rolled steel. Given the relevance of petitioners' comments and the nature of marketing these types of made-to-order products, we determined that petitioners' claims have some merit. Consequently, on December 4, 1998, and January 4, 1999, the Department requested respondents to provide additional information concerning the nature and frequency of price and quantity changes occurring between the date of order confirmation and date of invoice. We also asked respondents to report the order confirmation date for all home market and U.S. sales and to ensure that the entire universe of sales with order or invoice dates within the POI were properly reported. On December 21, 1998 and January 25, 1999, NKK reiterated that invoice/shipment date is the most appropriate date of sale and requested that it not have to report sales based on order confirmation date. NSC and KSC provided the requested data in accordance with the Department's instructions.

The Department is preliminarily using the dates of sales reported by each respondent (date of shipment for NSC, invoice/shipment date for NKK, and invoice date for KSC). We intend to fully examine this issue at verification, and we will incorporate our findings, as appropriate, in our analysis for the final determination. If we determine that order confirmation is the most appropriate date of sale, we may resort to facts available for the final determination to the extent that this information has not been reported by the respondents. Due to the complexity of this issue, we invite all interested parties to submit comments on this issue in accordance with the schedule set forth in this notice.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in Japan during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eleven characteristics to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: paint, quality, carbon content, strength, thickness, width, coiled or non-coiled, temper rolling, pickling, edge trim, and patterns. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping questionnaire and reporting instructions.

Fair Value Comparisons

To determine whether sales of hot-rolled steel from Japan to the United States were made at less than fair value, we compared the export price (''EP'') to the normal value (''NV''), as described in the ''Export Price'' section of this notice below, or the constructed export price (''CEP'') to the NV, as described in the ''Constructed Export Price'' section of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs. In accordance with section 772(a) and (c) of the Act, we calculated EP for all of NSC's sales, all of NKK's sales, and the sales KSC reported as EP sales since the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts on the record. In accordance, with section 772 (b), (c) and (d) of the Act, we calculated CEP for all of KSC's reported CEP sales as the merchandise was sold in the United States by or for the account of the producer or by a seller affiliated with the producer or exporter, before or after the date of importation.

Export Price

We based our calculation for certain sales on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation. We calculated EP based on packed prices charged to the first unaffiliated customer in the United States.

For NSC, NKK, and KSC we made company-specific adjustments to the EP starting price, where appropriate, for the following movement expenses, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight, international freight (including ocean freight), marine insurance fees, and brokerage and handling expenses; discounts and rebates, and billing adjustments. No other adjustments were claimed or allowed.

Constructed Export Price

We calculated CEP for KSC, in accordance with section 772(b) of the Act when the first sale to an unaffiliated purchaser was made in the United States by a seller affiliated with the producer or exporter after the subject merchandise was imported into the United States.

We based CEP on the packed ex-warehouse or delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions from the starting price for discounts, credit, and commissions. We also made deductions for the following movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act: inland freight from plant/warehouse to port of exportation, foreign brokerage expenses, international freight (including ocean freight), marine insurance, U.S. inland freight from warehouse to the unaffiliated customer, U.S. warehouse expenses, and U.S. Customs duties. In accordance with section 772(d)(1) of the Act, we deducted selling expenses

associated with economic activities occurring in the United States, including direct selling expenses, inventory carrying costs, and other U.S. indirect selling expenses. In accordance with section 773(d)(3) of the Act, we also deducted an amount for profit. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

Although KSC performs further manufacturing on imported merchandise, KSC did not provide transaction-specific information on these sales in the United States. KSC is affiliated with two further manufacturers in the United States. With regard to further manufactured sales by its affiliate VEST Inc. (''VEST''), KSC reported that it was unable to retrieve the requested data due to difficulties with the computer system and other complications. After a review of the information on the record, the Department determined that further manufactured sales through VEST account for less than five percent of total U.S. sales. Therefore, for purposes of the preliminary results, the Department is disregarding these sales and not utilizing these transactions in its margin calculation.

With regard to KSC's further manufactured sales via its other affiliated further manufacturer, California Steel Industries, Inc. (''CSI''), KSC argued that, due to conflicts of interest, CSI was unable and unwilling to provide transaction-specific further manufacturing information. After a review of the information placed on the record, the Department determined that these sales account for a substantial portion of KSC's U.S. sales. Section 776(a)(2) of the Act provides, that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, as provided in section 782(i), the Department shall, subject to subsection 782(d), use facts otherwise available in reaching the applicable determination. Section 776(b) of the Act provides that adverse inferences may be used where an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (1994). In the instant case, the Department has preliminarily determined that KSC's and CSI's failure to respond to section E of the Department's questionnaire satisfies the requirements of section 776(a)(2)(A), (B), and (C), as well as section 776(b). Therefore, the Department has based its margin on adverse facts available. As facts available, we used the highest calculated margin for U.S. sales that fell within the mainstream of KSC's transactions. In selecting the adverse margin, the Department sought a margin that was indicative of KSC's customary selling practices and was rationally related to the transactions to which the adverse facts available were being applied. The selected margin is also sufficiently adverse to effectuate the statutory purpose of adverse facts available, which is to induce respondents to provide the Department with complete information in a timely manner. *See* Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Italy, 63 FR 40422, 40428, (July 29, 1998).

Section 776(c) provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall to the extent practicable corroborate that information from independent sources that are reasonably at their disposal. Because the information used to establish the facts available margins for KSC's further manufactured sales was information KSC submitted in the course of the investigation, rather than secondary information, no corroboration of this data is necessary.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparison'' sections of this notice.

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for all respondents. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

B. Arm's Length Test

Sales to affiliated customers in the home market not made at arm's length prices (if any) were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. To test whether these sales were made at arm's length prices, we compared on a model-specific basis the prices of sales to affiliated and unaffiliated customers net of all discounts, rebates, billing adjustments, movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length and used those sales in determining NV. *See* 19 CFR 351.403(c). In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length prices and, therefore, excluded them from our LTFV analysis. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar product.

C. Downstream Sales

Pursuant to section 351.403 of the Department's regulations, the Department does not normally require the reporting of downstream sales if total sales of the foreign like product by a firm to all affiliated customers account for five percent or less of the firm's total sales of the foreign like product. In general, the Department does not believe it necessary or appropriate to require the reporting of downstream sales in all instances. Questions concerning the reporting of downstream sales are complicated, and the resolution of such questions depends on a number of considerations, including

the nature of the merchandise sold to and by the affiliate, the volume of sales to the affiliate, the levels of trade involved, and whether sales to affiliates were made at arm's length. In addition, the Department normally will not require the respondent to report the affiliate's downstream sales unless the sales to the affiliate fail the arm's length test. The Department believes that imposing the burden of reporting small numbers of downstream sales often is not warranted, and that the accuracy of determinations generally is not compromised by the absence of such sales.

In the instant case, NSC and KSC requested that they be excused from reporting a small percentage of home market downstream sales due to overwhelming burdens in obtaining the information and the fact that these downstream sales will not constitute appropriate matches for their U.S. sales of subject merchandise. After examining the data placed on the record, the Department has preliminarily determined that there are sufficient matches of sales in the home market and that the downstream sales in question account for less than three percent of each firm's total home market sales of subject merchandise. For purposes of this preliminary determination, the Department is disregarding this small percentage of downstream sales. The Department intends to thoroughly examine this issue at verification and will incorporate our findings, as appropriate in our analysis for the final determination. If we determine that these downstream sales were appropriate matches to U.S. sales, or where the data is readily available, we may resort to facts available for the final determination to the extent that this information has not been reported by the respondents.

D. Cost of Production (COP) Analysis

Based on the cost allegation submitted by petitioners in the original petition, the Department found reasonable grounds to believe or suspect that each of the respondents had made sales in the home market at prices below the cost of producing the merchandise, in accordance with section 773(b)(2)(A)(i) of the Act. As a result, the Department initiated an investigation to determine whether respondents made home market sales during the POI at prices below their respective COPs within the meaning of section 773(b) of the Act. *See* Initiation Notice (63 FR 56607, October 22, 1998).

We conducted the COP analysis described below.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP for hot-rolled steel based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses (SG&A), interest expenses, and packing costs. We relied on the COP data submitted by each respondent in its cost questionnaire response, except, as discussed below, in specific instances where the submitted costs were not appropriately quantified or valued.

NSC

We excluded from NSC's COP and CV data the reconciliation adjustment related to differences between the control number (''CONNUM'') specific cost and NSC's costs in its normal books and records.

NKK

We recalculated NKK's G&A expense rate based on NKK's company-wide G&A. Additionally we included the loss on outage for a blast furnace accident in G&A expense and the mill movement expenses in the base used for the G&A rate calculation. We disallowed NKK's adjustment for alleged double counting of certain cost of manufacturing items. Finally, we recalculated interest expense using the recalculated total cost of manufacturing for each CONNUM.

KSC

We recalculated Kawasaki's general and administrative (''G&A'') expense rate by including losses on disposal of fixed assets, special retirement expenses, and past service portion of pension cost.

2. Test of Home Market Prices

We compared the weighted-average COP by CONNUM for each respondent, adjusted where appropriate (*see* above), to home market sales prices of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. We compared the COP to home market prices, less any applicable movement charges and direct and indirect selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

Price-to-Price Comparisons

We performed price-to-price comparisons where there were sales of comparable merchandise in the home market that did not fail the arm's length and/or cost test. We made comparisons on an actual weight to actual weight basis. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C) of the Act. In accordance with section 773(a)(6)(A) and (B), we deducted home market packing costs and added U.S. packing costs.

NSC

We calculated NV based on prices to affiliated customers that passed the arm's length test and sales to unaffiliated home market customers. We made adjustments for physical differences in the merchandise, where necessary in accordance with 773(a)(6)(C)(ii) of the Act. We made deductions for quantity and sales promotion discounts, rebates and movement expenses. We found after reviewing the information placed on the record that NSC's reported home market freight expenses (INLFTCH) are inclusive of both affiliated and unaffiliated freight costs. The Department requested NSC to provide analyses demonstrating that expenses for freight services provided by affiliated suppliers were based on a market rate. However, NSC did not provide these comparisons. In addition, the Department was unable to determine which freight expenses were paid to affiliated or unaffiliated companies. Therefore, the Department, for this

preliminary determination has disallowed this adjustment in the home market. In addition, we made circumstance-of-sale (''COS'') adjustments for differences in credit and warranty expenses, where appropriate in accordance with 773(a)(6)(C)(iii) of the Act. In our NV calculations, we did not use a certain portion of NSC's reported downstream sales because the sales by NSC to its affiliated reseller passed the arm's length test (*see* Arm's Length Test section, above).

NKK

We calculated NV based on prices to affiliated customers that passed the arm's length test and sales to unaffiliated home market customers. We made adjustments for physical differences in the merchandise, where necessary. We made deductions for quantity and sales promotion discounts, rebates, billing adjustments, direct selling, and movement expenses. In addition, we made COS adjustments for differences in credit and warranty expenses, where appropriate in accordance with section 773(a)(6)(C)(iii). In our NV calculations, we did not use a certain portion of NKK's reported downstream sales because the sales by NKK to its affiliated reseller passed the arm's length test (*see* Arm's Length Test section, above).

KSC

We calculated NV based on prices to affiliated customers that passed the arm's length test and on sales to unaffiliated home market customers. We made adjustments for physical differences in the merchandise, where necessary. We made deductions for quantity and sales promotion discounts, rebates and movement expenses, direct selling expenses, and processing fees. In addition, we made COS adjustments for differences in credit and warranty expenses, where appropriate in accordance with section 776(a)(6)(C)(iii). In our NV calculations, we did not use a certain portion of KSC's reported downstream sales because the sales by KSC to its affiliated reseller passed the arm's length test (*see* Arm's Length Test section, above).

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed export sale from the exporter to the affiliated importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In this investigation, no respondent requested a LOT adjustment; however, KSC requested a CEP offset. To determine whether a LOT adjustment was necessary, in accordance with principles discussed above, we examined information regarding the distribution systems in both the United States and Japanese markets, including the selling functions, classes of customer and selling expenses for each respondent. Results of the LOT analysis for each respondent are summarized below. For a complete discussion and the results of the LOT analysis, please see the Department's memorandum on *Level of Trade,* dated February 12, 1999.

NSC

In the home market, NSC sold to unaffiliated and affiliated trading companies and to end-users. In the U.S. market, NSC sold only to trading companies and reported all sales on an EP basis. Based on our analysis we find that NSC performed essentially the same level of selling functions for all three groups of sales.

NSC claims that there is no difference in the selling functions between the home market and U.S. channels of distribution. When comparing NSC's U.S. sales to its home market sales, we found that NSC performed essentially the same level of selling functions in both the United States and home market. Based on our examination of the information on the record, we agree with NSC that it sold merchandise at the same LOT in the home market and the U.S. market. Therefore, we have not made a LOT adjustment because all price comparisons are at the same LOT and an adjustment pursuant to section 773(a)(7)(A) of the Act is not appropriate.

NKK

In the home market, NKK sold to unaffiliated and affiliated trading companies and to end-users. NKK reported its sales to unaffiliated trading companies and end-users as the same level of trade. NKK performed essentially the same level of selling functions for all three types of home market sales. Therefore, we find that there is one level of trade in the home market. In the U.S. market, NKK sold only to unaffiliated trading companies.

NKK claims that there are differences in the selling functions between the home market and U.S. channels of distribution and therefore its home market and U.S. sales should be considered made at different levels of trade. When comparing NKK's U.S. sales to its home market sales, we found that NKK provided different levels of selling functions with respect to its U.S. and home market sales. For example, NKK provided different levels of promotion, technical advice, warranty, financing, delivery, and inventory and warehousing services in the U.S. and in Japan. Based on our examination of the information on the record, we preliminarily determine that NKK sold merchandise at one LOT in the home market and a different LOT in the U.S. market. However, after a review of the data on the record, we do not have information which would allow us to examine pricing patterns between the relevant levels of trade based on respondent's sales of subject merchandise in the home market or other record information on which such an analysis could be based. Therefore, we do not have an appropriate basis upon which to determine a LOT adjustment. As a result, we have not made a LOT adjustment. For a complete discussion of LOT, please see the Department's memorandum on *Level of Trade,* dated February 12, 1999.

KSC

KSC stated that it sold subject merchandise through five channels of trade during the period of investigation, three in the home market, and two in the United States. KSC's U.S. sales were made to unaffiliated trading companies and reported as EP sales, or through its

U.S. affiliate, Kawasho International, and reported as CEP sales. Its three home market channels of trade involved sales to unaffiliated trading companies; sales to unaffiliated end-users; and sales through its affiliated reseller, Kawasho. For the last group of sales, the Department conducted its LOT analysis based on Kawasho's sales to the first unaffiliated customer.

The Department first examined whether any differences existed with respect to the selling functions performed by KSC in making sales to its three types of home market customers. The information on the record indicates that there is a difference between the selling functions performed in selling to end-users, directly or via affiliated trading companies, as compared to the other home market channel of trade. Therefore, using the information on the record, the Department preliminarily determined that KSC sells at two levels of trade in the home market.

Regarding KSC's U.S. EP sales, the Department found that evidence existed to differentiate the selling functions between sales made to unaffiliated trading companies for sales to the United States and sales made at the two different levels of trade in the home market. Based upon our analysis, we found a difference in the selling functions performed on EP sales as compared to sales at each of the two distinct levels of trade in the home market. Therefore, the Department preliminarily determined that the information on the record justifies treating KSC's EP sales as having been made at a different LOT from the two home market levels of trade. However, we do not have information which would allow us to determine whether there is a pattern of consistent price differences between the relevant LOTs in the home market. Therefore, we do not have an appropriate basis to determine a LOT adjustment.

Regarding KSC's U.S. CEP sales, we examined the selling functions performed by KSC in the home market in making sales to the two levels of trade, and the selling functions performed by KSC in making sales to its affiliate, Kawasho International, in the United States. For these CEP sales we determined that fewer and different selling functions were performed in making CEP sales to Kawasho International than in making sales at any of the two home market LOTs. Therefore, information on the record justifies treating CEP sales and the two groups of home market sales as having been made at different levels of trade.

We next examined whether a LOT adjustment was appropriate when KSC's CEP sales are compared to the home market levels of trade. The Department makes this adjustment when it is demonstrated that a difference in LOTs affects price comparability. However, where the available data do not provide an appropriate basis upon which to determine a LOT adjustment, and where the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). In the instant case, we were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act, as we found that none of the LOTs in the home market matched the LOT of the CEP transactions. Because of this, we were unable to calculate a LOT adjustment. Instead, because we determined that all of KSC's home market sales were made at levels of trade more advanced than the LOT of KSC's U.S. sales, we granted a CEP offset and applied this to comparisons between KSC's CEP sales and all HM sales.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Facts Available

Section 776(a)(2) of the Act provides, that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, as provided in section 782(i), the Department shall, subject to subsection 782(d), use facts otherwise available in reaching the applicable determination.

Section 776(b) of the Act provides that adverse inferences may be used when an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also,* Statement of Administrative Action (SAA) accompanying the URAA, H.R.Rep. No. 316, 103d Cong., 2d Sess. 870 (1994). In the instant case, the Department determined that the failure of KSC and its U.S. affiliate to respond to section E of the Department's questionnaire satisfies the requirements of section 776(a)(2)(A), (B), and (C). Therefore, in accordance with the statutory requirements, the Department applied adverse facts available. As adverse facts available we used the highest calculated dumping margin found for any individual product (*i.e.*, CONNUM) as the dumping margin for all sales via KSC's affiliated further manufacturer.

The Department also used facts available in determining the margins for certain U.S. sales by NSC. NSC reported the majority of U.S. sales on an actual weight basis. In addition, it reported all comparable merchandise in the home market on an actual weight basis. However, it reported a small quantity of U.S. sales on a theoretical weight basis. Due to the fact that NSC did not provide conversion factors for these U.S. sales upon the Department's request, we preliminarily assigned the highest calculated margin by CONNUM as facts available for these transactions. In addition, NSC did not provide full costs for certain CONNUMs.

Section 776(b) of the Act provides that adverse inferences may be used where an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also,* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (1994). As facts available, we used the highest calculated margin for U.S. sales that fell within the mainstream of NSC's and KSC's transactions. In selecting the adverse margin, the Department sought a margin that was indicative of NSC's and KSC's customary selling practices and was rationally related to the transactions to which the adverse facts available were being applied. The selected margin is also sufficiently adverse to effectuate the statutory purpose of adverse facts available, which is to induce respondents to provide the Department with complete information in a timely manner. *See* Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Italy, 63 FR 40422, 40428, (July 29, 1998).

NKK reported all its U.S. and home market sales on an actual weight basis, with the exception of less than one percent of home market sales. Although the Department requested conversion factors for these transactions, NKK refused to provide conversion factors for these sales. Therefore, for purposes of the preliminary determination, we used adverse facts available as the adjusted price for these transactions used in calculating NV. As adverse facts available for each CONNUM we assigned the highest calculated adjusted price for that CONNUM to the relevant transactions within that CONNUM.

All Others Rate

Recognizing the impracticality of examining all producers and exporters in all cases (*see* SAA at 873), section 735(c)(5)(A) of the Act provides for the use of an ''all others'' rate, which is applied to non-investigated firms. This section states that the all others rate shall generally be an amount equal to the weighted average of the weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins based entirely upon the facts available. Therefore, we have preliminarily assigned to all other exporters of Japanese hot-rolled steel, an ''all others'' margin that is the weighted average of the margins calculated for NSC, NKK and KSC.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Critical Circumstances

The Department notes that it will request company specific export information from NSC, NKK, and KSC, for our final determination. We invite interested parties to comment on the issue of critical circumstances, and we will consider these comments and the company specific data in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin (percent)
Nippon Steel Corporation	25.14
NKK Corporation	30.63
Kawasaki Steel Corporation	67.59
All Others	35.06

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of hot-rolled steel are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c). If this investigation proceeds normally, we will make our final determination no later than April 28, 1999.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: February 12, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–4196 Filed 2–18–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 19, 1999.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips (Companhia Siderúrgica Nacional or ''CSN''), Barbara Chaves or Samantha Denenberg (Usinas Siderúrgicas de Minas Gerais and Companhia Siderúrgica Paulista or ''USIMINAS/COSIPA''), or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0193, (202) 482–0414, (202) 482–1386, and (202) 482–3833, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

Preliminary Determination

The Department preliminarily determines that hot-rolled flat-rolled carbon-quality steel products (''hot-rolled steel'') from Brazil are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Period of Investigation

The period of investigation (POI) is July 1, 1997 through June 30, 1998.

Case History

On October 15, 1998, the Department initiated antidumping duty

investigations of imports of hot-rolled steel from Brazil, Japan, and the Russian Federation. See Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, Japan, and the Russian Federation (Initiation), 63 FR 56607, (October 22, 1998). Since the initiation of this investigation the following events have occurred:

On October 22, 1998, the Department requested comments from petitioners (Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Ispat Inland Steel, LTV Steel Company, Inc., National Steel Corporation, California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel, Inc., IPSCO Steel Inc., Steel Dynamics, Weirton Steel Corporation, the Independent Steelworkers Union, and the United Steelworkers of America) and respondents regarding the criteria to be used for model matching purposes. On October 22 and 27, 1998, petitioners and respondents (CSN, USIMINAS, COSIPA, Nippon Steel Corporation, NKK Corporation, Kawasaki Steel, Sumitomo Metal Industries, Ltd., and Kobe Steel Ltd.), submitted comments on our proposed model matching criteria.

On October 19, 1998, the Department issued Section A of the antidumping questionnaire to Companhia Acos Expeciais Itabira (''ACESITA''). On October 20, 1998, the Department issued Section A of the antidumping questionnaire to CSN, USIMINAS, and COSIPA. These four companies are the only known producers of the subject merchandise from Brazil. On October 30, 1998, the Department issued Sections B–D of the antidumping questionnaire to COSIPA, USIMINAS, and CSN.

On October 27, 1998, ACESITA submitted a letter stating that it had not exported subject merchandise to the United States during the POI. Section 351.204(c)(1) allows the Department to not examine a particular exporter or producer if that exporter or producer and the petitioners agree. On November 2, 1998, having reviewed ACESITA's submission, petitioners agreed that the Department need not examine ACESITA in this proceeding. Consequently, ACESITA was not selected as a mandatory respondent in this investigation. See Respondent Selection Memorandum, (November 3, 1998). Thus, on November 3, 1998, the Department terminated the investigation of ACESITA.

The Department set aside a period for all interested parties to raise issues regarding product coverage. Throughout the month of November, the Department received numerous filings from respondents and other interested parties proposing amendments to the scope of these investigations. On January 6 and 27, 1999, petitioners filed letters agreeing to amend the scope of these investigations to exclude those products for which Itochu International Inc., Nippon Steel Corporation, and others had requested exclusion. See Scope Memorandum to Joseph A. Spetrini, (February 12, 1999).

On November 16, 1998, the United States International Trade Commission (''ITC'') notified the Department of its affirmative preliminary finding of threat of material injury in this case. Additionally, on November 25, 1998, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise from Brazil (63 FR 65221).

On November 16, 1998, the Department received the Section A questionnaire responses from CSN, USIMINAS, and COSIPA. Petitioners filed comments on CSN's, USIMINAS' and COSIPA's Section A questionnaire responses on November 30, 1998 and December 1, 1998. The Department issued supplemental questionnaires for Section A to CSN, USIMINAS, and COSIPA on December 4, 1998.

On December 21, 1998, the Department received responses to Sections B, C, and D of the questionnaire from CSN, USIMINAS, and COSIPA. On December 22, 1998, the Department issued a decision memorandum collapsing USIMINAS and COSIPA for purposes of this investigation. *See the Affiliated Respondents section below.* Petitioners filed comments on CSN's and USIMINAS/COSIPA's Section B–D questionnaire responses on December 28, 1998. The Department issued supplemental questionnaires for Sections B, C and D to CSN and USIMINAS/COSIPA on January 4, 1999. The Department received responses to the Section A supplemental questionnaires on January 19, 1999 and responses to the Section B–D supplemental questionnaires on January 25, 1999. Respondents submitted additional data on February 2, 1999, February 3, 1999, and February 9, 1999.

In their petition filed on September 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of hot-rolled steel from Brazil. While the Department preliminarily found critical circumstances to exist in concurrent hot-rolled steel investigations of Japan and the Russian Federation (*see 63 FR 65750, November 30, 1998*), we did not issue a determination with respect to Brazil at that time. *See the Critical Circumstances section below.*

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or

0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10—0.14%	0.90% Max	0.025% Max	0.005% Max	0.30—0.50%	0.50—0.70%	0.20—0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.063—0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000—88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10—0.16%	0.70—0.90%	0.025% Max	0.006% Max	0.30—0.50%	0.50—0.70%	0.25% Max	0.20% Max.

Mo
0.21% Max .....

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10—0.14% ..... V(wt.) ..... 0.10 Max	1.30—1.80% .... Cb 0.08% Max.	0.025% Max	0.005% Max	0.30—0.50%	0.50—0.70%	0.20—0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.15% Max ..... Nb ..... 0.005% Min	1.40% Max ..... Ca ..... Treated	0.025% Max .... Al. 0.01—0.07%.	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max.

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses > 0.148 inches; Tensile Strength = 80,000 psi minimum.

- Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either: (i) Tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² and an elongation percentage ≥ 25 percent for thicknesses of 2mm and above.
- Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00,

7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the ''Scope of Investigation'' section above and sold in Brazil during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. The Department has relied on eleven characteristics to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: paint, quality, carbon content, strength, thickness, width, coiled or non-coiled, whether or not temper rolled, whether or not pickled, edge trim, and whether or not with patterns in relief. The Department assigned weights to each characteristic. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, the Department compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping questionnaire and reporting instructions. The Department compared prime merchandise to prime merchandise, consistent with our practice.

Affiliated Respondents

Under section 771(33)(E) of the Act, if one party owns, directly or indirectly, five percent or more of the other they are affiliated. Since USIMINAS owns 49.79% of COSIPA, the Department determined that USIMINAS and COSIPA are affiliated. See Collapsing Memorandum to Joseph A. Spetrini, (December 22, 1998).

Furthermore, it is the Department's practice to collapse affiliated producers for purposes of calculating a margin when they have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities and the facts demonstrate that there is significant potential for manipulation of pricing or production. In accordance with § 351.401(f) of the Antidumping Regulations, the Department concluded that both companies are fully integrated producers currently offering a similar range of products, including hot-rolled products that would not require substantial retooling to restructure manufacturing priorities. Furthermore, in light of USIMINAS's high level of ownership of COSIPA, common directors, and the fact that COSIPA is consolidated on USIMINAS's financial statements, there is a significant possibility of price or production manipulation between the two companies. For these reasons, the Department collapsed USIMINAS and COSIPA into one entity for the purpose of this investigation. See Id.

While it also appears that there may be links between the collapsed entity, USIMINAS/COSIPA, and CSN, there is insufficient information on the record at this time to consider all three companies to be affiliated and to collapse CSN with USIMINAS/COSIPA. Therefore, we preliminarily do not find CSN to be affiliated with USIMINAS/COSIPA and we preliminarily are not collapsing CSN with USIMINAS/COSIPA.

The Department notes that affiliation and collapsing are very complex and difficult issues. Therefore, the Department invites parties to submit information and comment on these issues to ensure that our decision is based on a complete and thorough record. The Department intends to examine these issues carefully for the final determination of this investigation. Any new information that parties wish to provide the Department must be submitted no later than March 1, 1999. All information or arguments parties provide will be fully analyzed in making our final determination.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, the Department determines Normal Value (''NV'') based on sales in the comparison market at the same level of trade (''LOT'') as the Export Price (''EP'') or Constructed Export Price (''CEP'') transaction. The NV LOT is that of the starting price of sales in the comparison market or, when NV is based on Constructed Value (''CV''), that of the sales from which the Department derives selling, general, and administrative expenses (''SG&A'') and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, the Department examines stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, the Department makes a LOT adjustment in accordance with section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, the Department adjusts NV under section 773(A)(7)(B) of the Act (the CEP offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

CSN

CSN sells to trading companies in the U.S. market and service centers/distributors and end-users in the home market. CSN states that it provides warranties, technical assistance, and freight arrangements equally to service centers/distributors and end-users. Thus, the selling functions provided to different classes of home market customers do not vary significantly. CSN provides the same selling functions for U.S. sales except for technical assistance. Technical assistance is only provided with respect to home market sales. However, CSN notes that this assistance is mainly provided in connection with warranty claims which are available to all customers. We find that technical assistance does not constitute a significant difference between the services provided to home market and U.S. customers. Consequently, the Department preliminarily determines that there is only one LOT in the home market and that it is at the same level as the single LOT in the U.S. market.

USIMINAS/COSIPA

In the home market, USIMINAS/COSIPA made sales to end-users,

affiliated distributors, and unaffiliated distributors. USIMINAS/COSIPA claim four channels of distribution with respect to these sales: (1) Direct sales to end users; (2) sales through affiliated distributors to end-users; (3) sales to unaffiliated distributors; and (4) sales to end-users for which an affiliated distributor was contracted to further process the merchandise for USIMINAS.

USIMINAS/COSIPA claim that there is a significant difference between prices charged to end-users and prices charged to distributors. USIMINAS/COSIPA further claim that prices charged to distributors and to end-users differ significantly from prices charged by affiliated distributors to their downstream customers.

In determining whether separate levels of trade actually existed in the home market, the Department first examined available information on the record about the company's selling functions for each channel of distribution. USIMINAS/COSIPA indicated that the selling functions performed by the affiliated distributors in the second channel of distribution (downstream sales) are much more significant than those performed by USIMINAS/COSIPA in any of the other home market channels of distribution (mill direct sales). The following are examples of selling functions provided for downstream sales but not mill direct sales: inventory maintenance, faster delivery times because of higher inventory maintenance, more flexible credit terms, special warehousing, technical services, and more extensive delivery services. Additionally, downstream sales involve much smaller volume purchases than mill direct sales. For mill direct sales, USIMINAS/COSIPA provide only limited after-sales services/warranties, freight and delivery arrangements and technical advice. Thus, we determined that the downstream sales by affiliates were made at a different LOT than other HM sales.

While the USIMINAS/COSIPA mill direct sales to end-users (whether or not further processed) and mill direct sales to unaffiliated distributors involve different channels of distribution, these sales do not involve significant differences in selling functions. As noted above, all mill direct sales involve limited after-sales services/warranties, freight and delivery arrangements and technical advice, and there are no significant differences in selling functions. Therefore, the Department does not consider these channels to represent different levels of trade. Thus, we preliminarily determine that downstream sales and mill direct sales represent two different home market LOTs.

In the U.S. market, USIMINAS/COSIPA claim that all sales were made at one level of trade, through one channel of distribution. USIMINAS/COSIPA state that all U.S. sales were made to unaffiliated trading companies. USIMINAS/COSIPA state that these sales are made at the same level of trade as USIMINAS/COSIPA's direct home market sales to unaffiliated distributors (Home Market Channel 3). However, as noted above, the Department finds the selling functions of all home market mill direct sales to be quite similar to each other, constituting a single LOT. The Department additionally finds the selling functions for mill direct sales to be similar to U.S. sales. The only selling functions associated with U.S. sales are after-sales service/warranties and freight and delivery arrangements. As noted above, these services are also provided to home market mill direct customers. The only other selling function offered for home market mill direct sales is a limited amount of technical advice. Both home market mill direct sales and U.S. sales involve sales to large customers, including service centers/distributors that resell steel. (U.S. sales are only made to resellers.) Therefore, based on our analysis of selling functions, the Department finds U.S. sales to be at the same LOT as home market mill direct sales.

To the extent possible, we compared sales made in the U.S. to mill direct sales in the home market, which are at the same level of trade as the U.S. sales. To the extent that we were unable to match U.S. sales to identical home market sales at the same LOT, we used facts available as the basis of NV because we do not have complete data on downstream sales (*i.e.*, sales at the other home market LOT). *See the Fair Value Comparisons section below.*

Date of Sale

As stated in 19 CFR 351.401(i), the Department will use invoice date as the date of sale unless another date better reflects the date on which the exporter or producer establishes the material terms of sale. Both CSN and USIMINAS/COSIPA reported the date of the nota fiscal (*i.e.*, the date the product leaves the factory) as the home market date of sale, and the date of the commercial invoice (*i.e.*, the invoice issued on the date of shipment from the port) as the date of the U.S. sale.

CSN maintains that it uses the date of the nota fiscal for home market sales in its accounting records because this is the date on which material terms of sale are finalized. Moreover, CSN notes that it adds estimated freight and insurance expenses to each invoice, which are not confirmed in writing until the date of the nota fiscal. For its U.S. sales, CSN reported the date of the commercial invoice, stating that it is the date on which the material terms of sale are finalized and recorded in its accounting records.

USIMINAS and COSIPA maintain that for their home market sales, the nota fiscal is the date on which the material terms of sale are first finalized. The nota fiscal is also used by both companies' accounting systems to register home market sales. In response to another inquiry, COSIPA noted that it cannot provide order confirmation data since it does not keep records of this documentation. For their U.S. sales, USIMINAS and COSIPA claim that the actual quantity produced can and does change five to 20 percent from the time of order confirmation to the nota fiscal or commercial invoice. Therefore, they do not believe that order confirmation is the appropriate date of sale. USIMINAS and COSIPA both reported the date of the commercial invoice as the date of sale. USIMINAS claims it chose to report commercial invoice (instead of nota fiscal when the terms are first finalized) because it is the date to which all U.S. sales are tied in its accounting system. COSIPA claims that it reported commercial invoice because the mill's location at a port ensures that the nota fiscal and the commercial invoice leave the mill on the same date.

Petitioners claim that the sales documentation provided by respondents indicates that the order confirmation date, not the date of the commercial invoice or nota fiscal, appears to be the date when the material terms of sale are set for a majority of the respondents' home market and U.S. sales of hot-rolled steel. Given the relevance of petitioners' comments and the nature of marketing these types of made-to-order products, the Department determined that petitioners' claims have some merit. Consequently, on December 4, 1998, and January 4, 1999, the Department requested that respondents provide additional information concerning the nature and frequency of price and quantity changes occurring between order confirmation date and invoice date. The Department also asked respondents to report the order date for all home market and U.S. sales and to ensure that the entire universe of sales with order or invoice dates within the POI were properly reported.

USIMINAS and COSIPA subsequently reported in their supplemental responses U.S. sales based both on commercial invoice (as previously

reported) and U.S. sales based on order confirmation date (as requested by the Department). USIMINAS and COSIPA stated, however, that they were unable to provide complete data based on order confirmation dates due to the limited time available to them, but that they would supply complete data as soon as practicable. COSIPA reported the order confirmation dates of the U.S. sales by manually tracing these dates, as these records are not maintained on its computer system. Because of COSIPA's location at a port, its reported nota fiscal or commercial invoice date (the names in this case are interchangeable) also serves as an ex-factory date of shipment. This is not the case for USIMINAS. For home market sales, USIMINAS reported order confirmation dates corresponding to nota fiscal dates in the POI.

In its supplemental response, CSN reported those home market and U.S. order confirmation dates that were accessible from its database. However, the data was not complete as CSN states that the order confirmation date is not reliably maintained in its database. CSN also reported the date of the nota fiscal (i.e., the ex-factory shipment date) of its U.S. sales.

For this preliminary determination, the Department is using the dates reported by respondents as the date of sale since there is insufficient information on the record at this time to determine which date of sale is most appropriate. Thus, for home market sales, the Department is using the nota fiscal date as the date of sale, and for U.S. sales, the commercial invoice date. However, in most cases, the U.S. date of sale reported by respondents is after the date of shipment of the product from the factory. Because it is the Department's practice to use shipment date as the latest date of sale, the Department is using the ex-factory shipment date as the date of sale for U.S. sales in those cases in which the commercial invoice date is later. While CSN reported its ex-factory shipment dates, USIMINAS did not provide specific ex-factory shipment dates. USIMINAS did, however, state in its Section A response that commercial invoices are normally issued within two weeks after the merchandise leaves the factory.

Section 776(a)(2) of the Act provides, that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, as provided in section 782(i), the Department shall, subject to subsections 782(d), use facts otherwise available in reaching the applicable determination.

Because USIMINAS did not provide specific ex-factory shipment dates, the Department resorted to facts available. As facts available, the Department is estimating USIMINAS's ex-factory shipment date by subtracting 14 days from the reported date of sale. *See USIMINAS/COSIPA Analysis Memorandum, February 12, 1999.*

The Department intends to fully examine the date of sale issue during verification and will incorporate our findings, as appropriate, in our analysis for the final determination. If the Department determines that the order confirmation date is the most appropriate date of sale, we may resort to facts available for the final determination to the extent that respondents have failed to report order confirmation date or relevant sales. Due to the complexity of this issue, the Department invites all interested parties to submit comments in accordance with the schedule set forth in this notice.

Fair Value Comparisons

To determine whether sales of hot-rolled steel from Brazil to the United States were made at less than fair value, the Department compared the EP to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, the Department calculated weighted-average EPs for comparison to weighted-average NVs.

However, in the case of USIMINAS/COSIPA, the Department used facts available as the basis of NV if there were no identical matches at the same LOT. As explained in the ''Transactions Reviewed'' section below, the respondent did not provide useable downstream sales data. Additionally, the respondent did not provide complete cost data to enable us to calculate difference of merchandise adjustments. If there were no identical matches at the same LOT (mill direct sales), we were thus unable to determine if the best match would be to downstream sales. Nor could we calculate a difference in merchandise adjustment for comparisons to similar products. Therefore, we matched only identical product sales at the same LOT and used facts available for all other sales.

Section 776(b) of the Act provides that adverse inferences may be used when an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also, Statement of Administrative Action (SAA)* accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (1994). As adverse facts available, we used the highest calculated margin for U.S. sales that fell within the mainstream of USIMINAS/COSIPA's transactions. We selected a margin for sales that could be considered indicative of USIMINAS/COSIPA's customary selling practices and rationally related to the transactions to which the adverse facts available are being applied. In selecting the adverse margin, the Department sought a margin that is sufficiently adverse to effectuate the statutory purpose of adverse facts available, which is to induce respondents to provide the Department with complete information in a timely manner. *See Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Italy, 63 FR 40422, 40428, (July 29, 1998). See USIMINAS/COSIPA Analysis Memorandum, February 12, 1999.*

Transactions Reviewed

CSN

On November 12, 1998, CSN submitted a letter informing the Department that its home market sales to affiliated resellers were limited to two service centers/distributors. Furthermore, CSN claimed that these sales represented less than five percent of its home market sales of hot-rolled steel. Pursuant to section 351.403(d) of the Department's regulations, on December 16, 1998, the Department informed CSN that based on the information presently on the record, we would not require CSN to report the home market sales of its related resellers. However, CSN's claims regarding these sales to affiliates will be subject to verification. *See Downstream Sales Reporting Request letter to CSN, (December 15, 1998).*

USIMINAS/COSIPA

On November 25, 1998, USIMINAS/COSIPA submitted a request that they not be required to report their home market sales by affiliated resellers (''downstream sales''). USIMINAS/COSIPA claimed that these sales accounted for a small percentage of their home market sales, that the sales were made at a different level of trade from the U.S. sales, and that the merchandise was physically different from U.S. sales. USIMINAS/COSIPA identified three affiliated resellers. On December 15, 1998, the Department informed USIMINAS/COSIPA that they must report their downstream sales because they exceeded five percent of the total

quantity of USIMINAS/COSIPA's sales. *See Downstream Sales Reporting Request letter to USIMINAS/COSIPA, (December 15, 1998).*

While USIMINAS/COSIPA provided some information regarding its downstream sales in its January 25, 1999, submission, this information was incomplete. In particular, most product characteristics were not fully reported. As a result, we were unable to determine whether these sales matched to U.S. sales. We have requested respondent to provide complete information with respect to its downstream sales, but we will not receive this additional information in time for this preliminary determination. Therefore, we are not using submitted downstream sales data for this preliminary determination. *See the Fair Value Comparisons section above.*

Export Price

The Department based its calculations on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation. Furthermore, the Department calculated EP based on packed prices charged to the first unaffiliated customer in the United States.

The Department made company-specific adjustments as follows.

CSN

The Department made deductions from the starting price, where appropriate, for inland freight, and brokerage and handling incurred by CSN on its U.S. sales, in accordance with section 772(c)(2)(A) of the Act. The Department added an amount to the USP for the duty paid on imported coke, for which CSN received a duty drawback upon exportation of the merchandise. U.S. foreign inland freight was not reported for certain sales. As adverse facts available for these sales, we used the highest reported inland freight on any U.S. sale. No other adjustments were claimed or allowed.

USIMINAS/COSIPA

The Department made deductions from the starting price, where appropriate, for the following movement expenses, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight, international freight, and foreign brokerage and handling expenses. No other adjustments were claimed or allowed.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, the Department calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparison'' sections of this notice.

Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), the Department compared each of the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since each of the respondents' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, the Department determined that the home market was viable for all respondents. Therefore, the Department has based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Arm's Length Test

Sales to affiliated customers in the home market not made at arm's length prices (if any) were excluded from our analysis because the Department considered them to be outside the ordinary course of trade. *See 19 CFR 351.102.* To test whether these sales were made at arm's length prices, the Department compared, on a model-specific basis, the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to unaffiliated parties, the Department determined that sales made to the affiliated party were at arm's length. *See 19 CFR 351.403(c).* In instances where no price ratio could be constructed for an affiliated customer because identical merchandise was not sold to unaffiliated customers, the Department was unable to determine that these sales were made at arm's length prices and, therefore, excluded them from our LTFV analysis. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, the Department made a comparison to the next most similar product.

Cost of Production (COP) Analysis

Based on the cost allegation submitted by petitioners in the original petition, the Department found reasonable grounds to believe or suspect that respondents had made sales in the home market at prices below the cost of producing the merchandise, in accordance with section 773(b)(2)(A)(i) of the Act. As a result, the Department initiated an investigation to determine whether respondents made home market sales during the POI at prices below their respective COPs within the meaning of section 773(b) of the Act. See Initiation Notice, 63 FR 56607, (October 22, 1998).

The Department conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, the Department calculated COP for hot-rolled steel based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A, interest expenses, and packing costs. The Department relied on the COP data submitted by each respondent in its cost questionnaire response, except, as discussed below, in specific instances where the submitted costs were not appropriately quantified or valued.

CSN

The Department relied on CSN's COP and CV data submitted on January 25, 1999, except in the following instances: (1) we revised the general and administrative expense rate to include amortization of goodwill; (2) we recalculated CSN's financial expense rate to correct a mathematical error in its computation; and (3) we adjusted CSN's total cost of manufacture by a factor which restates electricity purchases from an affiliated party to the supplier's cost of production rather than the transfer price. See Cost Calculation Memorandum, February 12, 1999. Additionally, CSN failed to report costs for certain products. See the Price-to-Price Comparisons section below.

USIMINAS/COSIPA

The Department relied on USIMINAS/COSIPA's COP and CV data submitted on February 2 and 3, 1999 except in the following instances: (1) we revised financial expense based on the consolidated expense of the companies; and (2) we revised their submitted

SG&A expenses to include severance payments and profit sharing and to exclude net miscellaneous sales, dividend income and gains on investments, as well as several other smaller items. *See Cost Calculation Memorandum, February 12, 1999.* Because USIMINAS/COSIPA submitted multiple costs for many product control numbers (''CONNUMs'') and did not provide separate production quantities, we were unable to weight average the multiple costs. Therefore, as facts available, we used the highest of the reported COPs or CVs for each CONNUM. *See Preliminary Results of Antidumping Duty Administrative Review: Extruded Rubber Thread from Malaysia, 63 FR 60295, 60297, (November 9, 1998). See Cost Calculation Memorandum, February 12, 1999.* Additionally, USIMINAS/COSIPA failed to report costs for certain products. *See the Price-to-Price Comparisons section below.*

B. Test of Home Market Prices

The Department compared the weighted-average COP for each respondent, adjusted where appropriate (*see above*), to home market sales prices of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, the Department examined whether (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, the Department compared the COP to home market prices, less any applicable movement charges, taxes, billing adjustment, and discounts and rebates.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of respondent's sales of a given product were at prices less than the COP, the Department did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, the Department determined such sales to have been made in ''substantial quantities,'' in accordance with 773(b)(2)(C)(i), within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because the Department compared prices to weighted-average COPs for the POI , the Department also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, the Department disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, the Department disregarded all sales of that product.

Price-to-Price Comparisons

The Department performed price-to-price comparisons where there were sales of comparable merchandise in the home market that did not fail the cost test. The Department made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C) of the Act. (As noted above, we only compared identical sales for USIMINAS/COSIPA. Thus, adjustments for physical differences in merchandise were not made.) In accordance with Section 773(a)(6), the Department deducted home market packing costs and added U.S. packing costs.

Brazilian Taxes

Consistent with past practice, the Department adjusted NV for the full amount of IPI and ICMS taxes collected on the subject merchandise because these are VAT taxes that have a basis for deduction according to Section 773 (a)(6)(B)(iii) of the Act. The Department did not deduct the Brazilian PIS and COFINS taxes as suggested by respondents in calculating NV. Since these taxes are levied on total revenues, the taxes are not imposed directly on the product or its components. Accordingly, there is no basis to deduct them in the calculation of NV under Section 773 (a)(6)(B)(iii) of the Act. See Final Results of Antidumping Duty Administrative Review: Certain Cut-To-Length Carbon Steel Plate from Brazil, 63 FR 12744, 12746 (March 16, 1998).

In addition, respondents argue that the IPI and ICMS tax credits received on inputs used to manufacture export products should be deducted from the home market NV. The Department disagrees. Since these tax credits partially offset respondents' liability for taxes collected on sales, such a deduction would double count for taxes for which we have already made an adjustment. Therefore, the Department did not make a further tax deduction in determining NV.

CSN

CSN did not provide COP data for all home market CONNUMs. Section 776(a)(2) of the Act provides, that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, as provided in section 782(i), the Department shall, subject to subsection 782(d), use facts otherwise available in reaching the applicable determination.

Section 776(b) of the Act provides that adverse inferences may be used when an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. See also, Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (1994). In the instant case, because CSN failed to provide COP data for all home market CONNUMS, the Department applied adverse facts available in determining the margin for all U.S. sales matching to home market sales for which COP data was not provided. We also applied adverse facts available in determining the margin for all U.S. sales matches for which information to calculate difference in merchandise adjustments was not provided. As adverse facts available, we used the highest margin calculated for any individual product (i.e., CONNUM). The highest margin was based on sales that fell within the mainstream of CSN's transactions. We considered these sales indicative of CSN's customary selling practices and rationally related to the transaction to which the adverse facts available are being applied. In selecting the adverse margin, the Department sought a margin that is sufficiently adverse to effectuate the statutory purpose of adverse facts available, which is to induce respondents to provide the Department with complete information in a timely manner.

For CSN, the Department based NV on prices of home market sales that passed the cost test. The Department made deductions for foreign inland freight and taxes. The Department notes that the deduction for inland freight should be net of VAT taxes. While we have requested this information, we did not receive it in time for this preliminary determination. Consequently, as facts available, the Department has estimated an amount for VAT taxes paid on inland freight, and deducted this from the reported amounts. In addition, the Department made circumstance-of-sale (COS) adjustments for differences in credit, warranty expenses, and bank charges, where appropriate. On a few sales CSN incurred a bank fee that was charged upon the customer's payment.

CSN adjusted its accounts receivable accordingly, and the Department included this adjustment in its calculations. For U.S. sales by CSN, the Department recalculated credit to take into account the difference between ex-factory and ex-port date of shipment. See CSN Analysis Memorandum, February 12, 1999. For home market sales, the Department recalculated home market credit and used a price net of VAT taxes for the basis of the recalculation. See Final Determination of Antidumping Administrative Review: Certain Cut-To-Length Carbon Steel Plate from Brazil, 62 FR 18486 , 18487 (April 15, 1997). The Department recalculated both home market and U.S. credit expenses for those sales with missing payment dates. As facts available, the Department used the date of the respondent's supplemental submission of January 25, 1999, as the date of payment for sales missing payment dates. Because it is CSN's standard practice to charge late payment fees, we imputed home market interest revenue for sales with unreported payment dates. Where appropriate, we adjusted the home market starting price for billing adjustments. The Department also made adjustments for home market inventory carrying costs and indirect selling expenses to offset the U.S. commissions.

USIMINAS/COSIPA

On February 9, 1999, the respondent indicated that there were clerical errors in one of its sales databases previously submitted to the Department and submitted replacement data. Because these errors were clerical in nature and did not change the universe of sales reported, we used the revised data for this preliminary determination.

For USIMINAS/COSIPA, the Department based NV on prices of home market sales that passed the cost test. The Department made deductions for billing adjustments and discounts. The Department made deductions, where appropriate, for inland freight, inland insurance and warehousing. See USIMINAS/COSIPA Analysis Memorandum, February 12, 1999. The Department notes that the deduction for inland freight should be net of VAT taxes. However, while we have requested this information, we did not receive it in time for this preliminary determination. Consequently, as facts available, the Department has estimated an amount for VAT taxes paid on inland freight, and deducted this from the reported amounts. We made COS adjustments for imputed credit expense and warranties. Since USIMINAS/COSIPA did not properly calculate home market interest, the Department recalculated home market credit using a published Brazilian prime rate. See USIMINAS/COSIPA Analysis Memorandum, February 12, 1999. For U.S. sales by USIMINAS/COSIPA, the Department recalculated credit to take into account the difference between ex-factory and ex-port date of shipment. As facts available, the Department used the date of the respondents' supplemental submission of January 25, 1999, as the date of payment for sales missing payment dates. See USIMINAS/COSIPA Analysis Memorandum, February 12, 1999. For home market sales, the Department recalculated home market credit and used a price net of VAT taxes for the basis of the recalculation. See Final Determination of Antidumping Administrative Review: Certain Cut-To-Length Carbon Steel Plate from Brazil, 62 FR 18486 , 18487 (April 15, 1997). Because it is the standard practice for the respondents to charge late payment fees, the Department imputed interest revenue for sales with unreported payment dates.

USIMINAS/COSIPA did not provide COP data for all home market CONNUMs. In the instant case, the Department determined that USIMINAS/COSIPA's failure to provide COP data for all home market CONNUMS satisfies the requirements of section 776(a)(2)(A), (B), and (C) of the Act. Therefore, for all U.S. sales matching to home market sales for which COP data was not provided, the Department applied adverse facts available equal to the highest calculated margin. The highest margin was based on sales that fell within the mainstream of USIMINAS/COSIPA's transactions. We considered these sales indicative of their customary selling practices and rationally related to the transaction to which the adverse facts available are being applied. In selecting the adverse margin, the Department sought a margin that is sufficiently adverse to effectuate the statutory purpose of adverse facts available, which is to induce respondents to provide the Department with complete information in a timely manner.

Currency Conversion

The Department made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Critical Circumstances

On October 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of hot-rolled steel from Brazil. In accordance with 19 CFR 351.206(c)(2)(i), since this allegation was filed at least 20 days prior to the preliminary determination, the Department must issue its preliminary critical circumstances determination no later than the preliminary determination.

Section 733(e)(1) of the Act provides that if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

1. History of Dumping or Importer Knowledge of Dumping

To determine whether there is a history of dumping of the subject merchandise, the Department normally considers evidence of an existing antidumping duty order in the United States or elsewhere to be sufficient. The Department found that there is an antidumping duty order on hot-rolled steel from Brazil in Mexico, and therefore determined that there is a history of dumping and material injury by reason of dumped imports of the subject merchandise.

2. Massive Imports

Since the first prong of the critical circumstances test has been met, the Department must examine whether there have been massive imports over a relatively short period of time. To determine whether imports were massive over a relatively short time period, the Department typically compares the import volume of the subject merchandise for the three months immediately preceding and following the filing of the petition. See 19 CFR 351.206(i). Pursuant to 19 CFR 351.206(h)(2), the Department will consider an increase of 15 percent or more in the imports of the subject merchandise over the relevant period to be massive. According to official U.S. Customs Bureau statistics for the first two months of the comparison period (October and November) and according to preliminary Customs Bureau statistics

for the third month (December), there was less than a 15 percent increase in imports from the level of the preceding three months. Therefore, there have not been massive imports over the examined period, and the Department preliminarily does not find that critical circumstances exist for CSN or USIMINAS/COSIPA. See CSN and USIMINAS/COSIPA Analysis Memorandums, February 12, 1999. The Department notes that it has requested company specific shipment information from CSN, USIMINAS, and COSIPA but that we have not received it in time for this preliminary determination. We invite interested parties to comment on the issue of critical circumstances, and we will consider these comments and the company specific data in making our final determination.

Verification

As provided in section 782(i) of the Act, the Department will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, the Department is directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Department will instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin
CSN	50.66
USIMINAS/COSIPA	71.02
All Others	58.76

International Trade Commission Notification

In accordance with section 733(f) of the Act, the Department has notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of hot-rolled steel are materially injuring, or threaten material injury to the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. See 19 CFR 351.310(c). If this investigation proceeds normally, we will make our final determination no later than April 28, 1999.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: February 12, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–4197 Filed 2–18–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 19, 1999.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351 (1998).

Amendment to the Final Determination

On December 18, 1998, the Department made its final determination that certain preserved mushrooms from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, December 31, 1998) (''Final Determination''). We disclosed our calculations for the final determination to all interested parties on December 21 and 22, 1998.

On January 8, 1999, we received a submission from the respondent exporters in the investigation, China Processed Food Import & Export Company (''China Processed'') and its affiliate Xiamen Jiahua Import & Export Trading Company, Ltd. (''Xiamen Jiahua''), Shenzhen Cofry Cereals, Oils, & Foodstuffs Company, Ltd. (''Shenzhen Cofry''), and Tak Fat Trading Corporation Co. (''Tak Fat''), alleging ministerial errors pertaining to the margin calculations in the Department's final determination. On the same date, we received a submission from the

petitioners [1] alleging ministerial errors pertaining to Shenzhen Cofry's margin calculation. On January 13, 1999, the petitioners submitted comments on the respondents' allegations.

After analyzing the submissions, we have determined, in accordance with 19 CFR 351.224, that ministerial errors were made in the margin calculations for each of the responding exporters. Specifically:

- We inadvertently failed to exclude diesel fuel expenses from the factory overhead expenses used to calculate the surrogate value percentage for factory overhead.
- We inadvertently failed to follow our stated methodology to calculate the surrogate value for tin cans of certain sizes.
- We inadvertently failed to follow our stated methodology to calculate a portion of the fresh mushroom input freight value for one of China Processed's suppliers.
- We inadvertently applied the wrong consumption factor for packing tape used to seal some of the packing cartons shipped by one of Xiamen Jiahua's suppliers.
- We inadvertently applied the surrogate value for tin cans to the weight, rather than the number, of cans consumed by one of Shenzhen Cofry's suppliers.
- We inadvertently applied the surrogate value for can labels to the weight, rather than the number, of labels consumed by both of Shenzhen Cofry's suppliers.

For a detailed discussion of the ministerial errors allegations and the Department's analysis, see Memorandum to Louis Apple from the Team, dated January 22, 1999.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of certain preserved mushrooms from the PRC. The revised weighted-average dumping margins are in the ''Antidumping Order'' section below.

Scope of Order

The products covered by this antidumping duty order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species Agaricus bisporus and Agaricus bitorquis. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the investigation are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this investigation are the following: (1) all other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this investigation is classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (''HTS''). Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under the order is dispositive.

Antidumping Duty Order

On February 12, 1999, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that a U.S. industry is materially injured by reason of imports of certain preserved mushrooms from the PRC, pursuant to section 735(b)(1)(A) of the Act.

In addition, three ITC Commissioners found that critical circumstances exist with regard to such products, and three Commissioners found that critical circumstances do not exist with regard to such imports from the PRC. Section 771(11) of the Act provides that if the Commissioners voting on a determination ''are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination.'' We consider that the tie-vote provision in section 771(11) applies to critical circumstances determinations.

We note that critical circumstances decisions are referred to as both ''determinations'' and ''findings'' in the statute. Moreover, while the legislative history will sometimes refer to the Commission's critical circumstances ''findings'' (*see, e.g.*, H.R. Rep. No. 96–317, at 69 (1979)), these decisions are more often identified as ''determinations.'' *See, e.g.*, S. Rep. No. 96–249, at 74 (1979); H.R. Rep. No. 103–826, at 50 (1994). Since the terms ''findings'' and ''determinations'' are used interchangeably in the statute and legislative history, the use of one or the other does not preclude the application of section 771(11) to the Commission's consideration of the critical circumstances issue.

Congress promulgated the critical circumstances provision in order ''to provide prompt relief to domestic industries suffering from large volumes of, or a surge over a short period of, imports and to deter exporters whose merchandise is subject to an investigation from circumventing the intent of the law by increasing their exports to the United States during the period between initiation of an investigation and a preliminary determination by the [Department].'' H.R. Rep. 96–317, at 63 (1979). In amending the critical circumstances provisions in 1988, Congress developed ''an improved critical circumstances procedure [that] will significantly strengthen antidumping and countervailing duty procedures by revitalizing a provision that has up to now been ineffective.'' H.R. Rep. No. 100–576, at 611 (1988). Considering this legislative history, we conclude that Congress did not intend to limit the availability of retroactive relief in cases such as this one to only those instances where two-thirds of the Commission votes to grant such relief. Therefore, we consider the Commission to have made an affirmative critical circumstances determination. The Department's finding in this regard is consistent with the Department's treatment of this issue in *Notice of Antidumping Order: Coumarin from the People's Republic of China*, 60 FR 7751 (February 9, 1995).

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the United States Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of certain preserved mushrooms from the PRC. These antidumping duties will be assessed on all unliquidated entries of imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after August 5, 1998,

[1] L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushroom Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.

the date of publication of the preliminary determination in the **Federal Register**, except for subject merchandise exported by Tak Fat or other companies not specifically named below. For merchandise exported by Tak Fat or by other companies not specifically named below, we are directing the Customs Service to assess antidumping duties on all unliquidated entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after May 7, 1998, the date 90 days prior to the date of publication of the preliminary determination in the **Federal Register**, in accordance with the critical circumstances finding in the final determination.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the cash deposits listed below for the subject merchandise. The ''PRC-wide Rate'' applies to all exporters of certain preserved mushrooms not specifically listed below.

The revised final weighted-average margins are as follows:

Exporter/manufacturer	Original final margin percentage	Revised final margin percentage
China Processed Food I&E Co./Xiamen Jiahua I&E Trading Company, Ltd	154.71	121.47
Tak Fat Trading Co	178.59	162.47
Shenzhen Cofry Cereals, Oils, & Foodstuffs Co., Ltd	126.16	151.15
Gerber (Yunnan) Food Co	158.79	142.11
Jiangsu Cereals, Oils & Foodstuffs Group Import & Export Corporation	158.79	142.11
Fujian Provincial Cereals, Oils & Foodstuffs I&E Corp	158.79	142.11
Putian Cannery Fujian Province	158.79	142.11
Xiamen Gulong I&E Co., Ltd	158.79	142.11
General Canned Foods Factory of Zhangzhou	158.79	142.11
Zhejiang Cereals, Oils & Foodstuffs I&E Corp	158.79	142.11
Shanghai Foodstuffs I&E Corp	158.79	142.11
Canned Goods Co. of Raoping	158.79	142.11
PRC-wide Rate	198.63	198.63

This notice constitutes the antidumping duty order with respect to certain preserved mushrooms from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: February 16, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–4199 Filed 2–18–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–802]

Notice of Antidumping Duty Order: Certain Preserved Mushrooms From Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 19, 1999.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Mary Jenkins, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–1756, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351 (1998).

Scope of Order

For purposes of this investigation, the products covered are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this investigation are the species *Agaricus bisporus* and *Agaricus bitorquis*. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the investigation are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this investigation are the following: (1) all other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this investigation is classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (''HTS''). Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Antidumping Duty Order

On February 12, 1999, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that a U.S. industry is ''materially injured,'' within the meaning of section 735(b)(1)(A) of the Act, by reason of imports of certain preserved mushrooms from Indonesia. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the United States Customs

Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price and constructed export price of the merchandise for all relevant entries of certain preserved mushrooms from Indonesia. These antidumping duties will be assessed on all unliquidated entries of the subject merchandise from PT Dieng Djaya/PT Surya Jaya Abadi Perkasa that are entered, or withdrawn from warehouse, for consumption on or after December 31, 1998, the date on which the Department published its final determination notice in the **Federal Register** (63 FR 72268).

In addition, these antidumping duties will be assessed on all unliquidated entries of the subject merchandise from PT Zeta Agro Corporation and all other exporters/producers that are entered, or withdrawn from warehouse, for consumption on or after August 5, 1998, the date on which the Department published its preliminary determination notice in the **Federal Register** (63 FR 41786).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the cash deposits listed below for the subject merchandise. The All Others rate applies to all exporters of subject merchandise not specifically listed below.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
PT Dieng Djaya/PT Surya Jaya Abadi Perkasa	7.94
PT Zeta Agro Corporation	22.84
All Others	11.26

This notice constitutes the antidumping duty order with respect to certain preserved mushrooms from Indonesia, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: February 16, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–4200 Filed 2–18–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 19, 1999.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 CFR Part 351 (1998).

Amendment to the Final Determination

On December 18, 1998, the Department made its final determination that certain preserved mushrooms from India are being, or are likely to be, sold in the United States at less than fair value. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India,* 63 FR 72246, December 31, 1998 (''Final Determination''). We disclosed our calculations for the final determination to all interested parties on December 21 and 22, 1998.

On January 8, 1999, we received a submission from the petitioners [1] in the investigation alleging ministerial errors pertaining to the margin calculations in the Department's final determination.

After analyzing the submission, we have determined, in accordance with 19 CFR 351.224, that ministerial errors were made in the margin calculations for Ponds India Ltd. Specifically:

- We failed to include all mini mushroom models for cost of production calculation purposes.
- We failed to include all mini mushroom models for constructed value calculation purposes.

For a detailed discussion of the ministerial error allegations and the Department's analysis, see Memorandum to Louis Apple from the Team, dated January 29, 1999.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of certain preserved mushrooms from India. The revised weighted-average dumping margins are in the ''Antidumping Order'' section below.

Scope of Order

The products covered by this antidumping duty order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered by this order are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

[1] L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushroom Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.

Excluded from the scope of the order are the following: (1) all other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (''HTS''). Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Antidumping Duty Order

On February 12, 1999, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that a U.S. industry is materially injured by reason of imports of certain preserved mushrooms from India, pursuant to section 735(b)(1)(A) of the Act. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the United States Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price and constructed export price of the merchandise for all relevant entries of certain preserved mushrooms from India. These antidumping duties will be assessed on all unliquidated entries of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after August 5, 1998, the date of publication of the preliminary determination in the **Federal Register**.

On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, the cash deposits listed below for the subject merchandise. The All Others rate applies to all exporters of subject merchandise not specifically listed below.

The revised final weighted-average dumping margins are as follows:

Exporter/manufacturer	Original final margin Percentage	Revised final margin percentage
Agro Dutch Foods Ltd.	6.28	6.28
Ponds (India) Ltd.	14.19	14.91
Alpine Biotech Ltd.	243.87	243.87
Mandeep Mushrooms Ltd.	243.87	243.87
All Others	10.87	11.30

This notice constitutes the antidumping duty order with respect to certain preserved mushrooms from India, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: February 16, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–4201 Filed 2–18–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; initiation of new shipper antidumping duty administrative review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping duty administrative review.

SUMMARY: The Department of Commerce has received two requests to conduct a new shipper administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d), we are initiating this administrative review.

EFFECTIVE DATE: February 19, 1999.

FOR FURTHER INFORMATION CONTACT: Zak Smith or James Breeden, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0189 or (202) 482–1174, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the regulations of the Department of Commerce (''the Department'') are to the current regulations codified at 19 CFR Part 351(1998).

SUPPLEMENTARY INFORMATION:

Background

On November 30 and December 30, 1998, the Department received requests from Zhejiang Changshan Changhe Bearing Co. (''ZCCBC'') and Weihai Machinery Holding (Group) Corp. Ltd. (''Weihai''), respectively, pursuant to section 751(a)(2)(B) of the Act, and in accordance with 19 CFR 351.214(b), for a new shipper review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, (''TRBs'') from the People's Republic of China (''PRC''). This order has a December semiannual anniversary month. Accordingly, we are initiating a new shipper review for ZCCBC and Weihai as requested. The period of review is June 1, 1998 through November 30, 1998.

Initiation of Review

In accordance with 19 CFR 351.214(b)(2) ZCCBC and Weihai provided certification that they did not export subject merchandise to the United States during the period of investigation; certification that, since the investigation was initiated, they have never been affiliated with any

exporter or producer who exported the subject merchandise to the United States during the period of investigation, including those not individually examined during the investigation; certification that their export activities are not controlled by the central government; documentation establishing: (i) The date on which their TRBs were first entered, or withdrawn from warehouse, for consumption, or if the exporter or producer could not establish the date of first entry, the date on which they first shipped the subject merchandise for export to the United States; (ii) the volume of that and subsequent shipments; and (iii) the date of the first sale to an unaffiliated customer in the United States. Therefore, in accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on TRBs from the PRC. We intend to issue the final results of this review not later than 270 days after the day on which this new shipper review is initiated.

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above listed companies, in accordance with 19 CFR 351.214(e). Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: February 12, 1999.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–4195 Filed 2–18–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–829]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 19, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Lockard or Javier Barrientos, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to Companhia Siderugica Nacional (CSN), Usinas Siderugicas de Minas Gerais (USIMINAS) and Companhia Siderurgica Paulista (COSIPA) producers and exporters of certain hot-rolled flat-rolled carbon-quality steel products from Brazil. For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section of this notice.

Petitioners

The petition in this investigation was filed by Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Ispat Inland Steel, LTV Steel Company, Inc., National Steel Corporation, California Steel Industries, Gallatin Steel Company, Geneva Steel, Gulf States Steel Inc., IPSCO Steel Inc., Steel Dynamics, Weirton Steel Corporation, Independent Steelworkers Union, and United Steelworkers of America (the petitioners).

Case History

Since the publication of the notice of initiation in the **Federal Register**, the following events have occurred. *See Notice of Initiation of Countervailing Duty Investigation: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 63 FR 56623 (October 22, 1998) (*Initiation Notice*). On October 19, 1998 we issued countervailing duty questionnaires to the Government of Brazil (GOB) and the producers/exporters of the subject merchandise. We issued supplemental countervailing duty questionnaires on November 10 and December 17, 1998, and January 26, 1999. We received responses to these questionnaires on December 7, 1998, January 6, 1999, January 12, 1999, and February 8, 1999.

On November 12, 1998, Petitioners alleged an additional subsidy that was not included in the petition. On December 8, 1998 we initiated on this program. See ''Memorandum to Holly Kuga, Acting Deputy Assistant Secretary for AD/CVD Enforcement II, Regarding Petitioners' Allegations,'' a public document on file in the Central Records Unit, Room B–099 of the Main Commerce Building (CRU).

On December 1, 1998, we deemed this investigation extraordinarily complicated and postponed the preliminary determination to no later than January 25, 1998. *See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Postponement of Time Limit for Countervailing Duty Investigation,* 63 FR 67459 (December 7, 1998). On January 22, 1999, we determined that additional time was necessary to make the preliminary determination and further postponed the preliminary determination to no later than February 12, 1999. *See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Postponement of Time Limit for Countervailing Duty Investigation,* 64 FR 4638 (January 29, 1999).

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR 351 and published in the **Federal Register** on May 19, 1997 (62 FR 27295).

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements.

HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C percent	Mn percent	P percent	S percent	Si percent	Cr percent	Cu percent	Ni percent
0.10–0.14	0.90*	0.025*	0.005*	0.30–0.50	0.50–0.70	0.20–0.40	0.20*

*Max
Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches;
Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C percent	Mn percent	P percent	S percent	Si percent	Cr percent	Cu percent	Ni percent
0.10–0.16 Mo 0.21*	0.70–0.90*	0.025*	0.006*	0.30–0.50*	0.50–0.70*	0.25*	0.20

*Max
Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C percent	Mn percent	P percent	S percent	Si percent	Cr percent	Cu percent	Ni percent
0.10–0.14 V(wt.) 0.10*	1.30–1.80 Cb 0.08*	0.025*	0.005*	0.30–0.50	0.50–0.70	0.20–0.40	0.20*

*Max
Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C percent	Mn percent	P percent	S percent	Si percent	Cr percent	Cu percent	Ni percent
0.15* Nb	1.40* Ca	0.025* Al	0.010*	0.50*	1.00*	0.50*	0.20*

C percent	Mn percent	P percent	S percent	Si percent	Cr percent	Cu percent	Ni percent
0.005 Min	Treated	0.01–0.07					

*Max
Width = 39.37 inches; Thickness = 0.181 inches maximum;
Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses > 0.148 inches; Tensile Strength = 80,000 psi minimum.

• Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² and an elongation percentage ≥ 25 percent for thicknesses of 2mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Injury Test

Because Brazil is a ''Subsidies Agreement country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a U.S. industry. On November 25, 1998, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Brazil of the subject merchandise (63 FR 65221).

Alignment With Final Antidumping Duty Determination

On January 19, 1999, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigations. *See Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, Japan and the Russian Federation,* 63 FR 56607 (October 22, 1998). In accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final antidumping duty determinations in the antidumping investigations of certain hot-rolled flat-rolled carbon-quality steel products.

Period of Investigation

The period for which we are measuring subsidies (the POI) is calendar year 1997.

Facts Available

Section 776(a)(1) of the Act requires the Department to use the facts available if ''necessary information is not available on the record.'' The Department asked the GOB and the respondent companies twice to provide information about the market value of privatization currencies, but so far they have been unable to do so. This information is necessary to our analysis of the privatizations of the respondent companies. Because this information is not available on the record, we have resorted to the facts available as detailed in the ''Change in Ownership'' section below.

Company Histories

USIMINAS was founded in 1956 as a venture between the Brazilian Government, various stockholders and Nippon Usiminas. In 1974, the majority interest in USIMINAS was transferred to SIDERBRAS, the government holding company for steel interests. The company underwent several expansions of capacity throughout the 1980s. In 1990, SIDERBRAS was put into liquidation and the GOB decided to include its operating companies, including USIMINAS, in its National Privatization Program (NPP). In 1991, USIMINAS was partially privatized; as a result of the initial auction, Companhia do Vale do Rio Doce (CVRD), a majority government-owned iron ore producer, acquired 15 percent of USIMINAS's common shares. In 1994, the Government disposed of additional holdings, amounting to 16.2 percent of the company's equity. USIMINAS is now owned by CVRD and a consortium of private investors, including Nippon Usiminas, Caixa de Previdencia dos Funcionarios do Banco do Brasil (Previ) and the USIMINAS Employee Investment Club. CVRD was partially privatized in 1997.

COSIPA was established in 1953 as a government-owned steel production company. In 1974, COSIPA was transferred to SIDERBRAS. In the 1980s, the company underwent restructurings of its capacity. Like USIMINAS, COSIPA was included in the NPP after SIDERBRAS was put into liquidation. In 1993, COSIPA was partially privatized, with the GOB retaining a minority of the preferred shares. Control of the company was acquired by a consortium of investors led by USIMINAS. In 1994, additional government-held shares were sold, but the GOB still maintained approximately 25 percent of COSIPA's preferred shares. During the POI, USIMINAS owned 49.8 percent of the voting capital stock of the company.

Other principal owners include Bozano Simonsen Asset Management Ltd., the COSIPA Employee Investment Club and COSIPA's Pension Fund (FEMCO).

CSN was established in 1941 and commenced operations in 1946 as a government-owned steel company. In 1974, CSN was transferred to SIDERBRAS; only a very small amount of shares, a fraction of a percent, were held by private investors. The company underwent several capacity restructurings throughout the 1980s. In 1990, SIDERBRAS was put into liquidation and the GOB decided to include its operating companies, including CSN, in its NPP. In 1991, 12 percent of the equity of the company was transferred to the CSN employee's pension fund. In 1993, CSN was partially privatized; CVRD, through its subsidiary Vale do Rio Doce Navegacao S.A. (Docenave), acquired 9.4 percent of the common shares. The GOB's remaining share of the firm was sold in 1994. CSN is now owned by Docenave/CVRD and a consortium of private investors, including Uniao Comercio e Partipacoes Ltda., Textilia S.A., Previ, the CSN Employee Investment Club, and the CSN employee pension fund. As discussed above, CVRD was partially privatized in 1997; CSN was part of the consortium that acquired control of CVRD through this partial privatization.

Affiliated Parties

In the present investigation, there are affiliated parties (within the meaning of section 771(33) of the Act) whose relationship is sufficient to warrant treatment as a single company. In the countervailing duty questionnaire, consistent with our past practice, the Department defined companies as sufficiently affiliated to warrant potential treatment as a single company where one company owns 20 percent or more of the other company, or where companies prepare consolidated financial statements. The Department also has stated that companies may be considered sufficiently affiliated where there are common directors or one company performs services for the other company. *See Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy*, 61 FR 30287 (June 14, 1996) (*Pasta*). According to the questionnaire, companies that are sufficiently affiliated to warrant potential treatment as a single company and either (1) produce the subject merchandise or (2) have engaged in certain financial transactions are required to respond. This standard is designed to identify instances where two companies interests have merged and either both produce subject merchandise or there is ''evidence of the transmittal of subsidies between the companies.'' *See Pasta*, 61 FR at 30308.

USIMINAS owns 49.79 percent of COSIPA, as such, the companies are affiliated within the meaning of section 771(33)(E) of the Act. Moreover, given the level of ownership and the fact that both companies produce the subject merchandise, we preliminarily determine that it is appropriate to treat these two producers as a single company for purposes of this investigation. We calculated a single countervailing duty rate for these companies by dividing their combined subsidy benefits by their combined sales.

We also examined the relationship between USIMINAS and CSN in order to determine whether these two companies were affiliated and, if so, whether the level of affiliation between the two companies was sufficient to warrant treatment as a single company.

Two entities, CVRD and Previ, the pension fund of the Bank of Brasil, have meaningful holdings in both USIMINAS and CSN. CVRD holds 15.48 percent of USIMINAS and 10.3 percent of CSN (through Docenave) and holds two of the eight seats on each company's board of directors. Previ holds 15 percent of the common shares of USIMINAS and one seat on its board of directors and 13 percent of CSN and two seats on its board of directors. The record does not support a conclusion that either CVRD's ownership interests or Previ's ownership interests, standing alone, constitute common control of USIMINAS and CSN within the meaning of section 771(33)(F). Therefore, we do not consider that the evidence supports a finding that USIMINAS and CSN are affiliated through common control. In addition, as discussed below, the record at this time does not contain evidence to establish that the interests between CVRD and Previ have merged or that the two companies operate together when acting as owners of the respondent companies in order to warrant aggregating their interests when analyzing potential affiliation between USIMINAS and CSN.

CVRD, through its nearly wholly-owned subsidiary, Docenave, is a member of the CSN Shareholders Agreement, as is Previ. In this Agreement, which includes the major shareholders that participated in the first privatization auction, the members agreed to pre-vote CSN board issues and then vote the entire block of shares subject to the Agreement in order to control the company. The CSN Shareholders Agreement also confers certain additional rights on the members and resulted in Docenave's right to one more seat on CSN's board of directors than its percentage ownership of common shares would otherwise entitle. We note that CSN is also a principal member of the group of investors that gained control of CVRD in its 1997 partial privatization, and the two companies have the same Chairman.

With respect to USIMINAS, CVRD and Previ do not have the same position. Neither CVRD nor Previ is a party to the USIMINAS Shareholders Agreement. We note that there is one additional overlap between USIMINAS and CVRD; each company also holds 50 percent of VUP S.A., a holding company that controls a ferro-alloys producer.

The record does not indicate at this time that USIMINAs and CSN are under the common control of Previ and CVRD. Therefore, for purposes of this preliminary determination, we determine that the relationship between USIMINAS and CSN is not sufficient to justify a finding of affiliation and, as a result, also not sufficient to warrant treating the two companies as a single company. However, these relationships warrant further analysis and we will continue to examine the affiliation issue for the final determination.

Changes in Ownership

In the *General Issues Appendix (GIA), attached to the Final Affirmative Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993), we applied a new methodology with respect to the treatment of subsidies received prior to the sale of the company (privatization).

Under this methodology, we estimate the portion of the company's purchase price which is attributable to prior subsidies. We compute this by first dividing the face value of the company's subsidies by the company's net worth for each of the years corresponding to the company's allocation period, ending one year prior to the privatization. We then take the simple average of these ratios, which serves as a reasonable surrogate for the percentage that subsidies constitute of the overall value, *i.e.*, net worth, of the company. Next, we multiply the purchase price of the company by this average ratio to derive the portion of the purchase price that we estimate to be a repayment of prior subsidies. Then, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of the change in ownership.

In the current investigation, we are analyzing the privatizations of USIMINAS, COSIPA and CSN,

including the various partial privatizations. In conducting these analyses, to the extent that partially government-owned companies purchased shares, we have not considered the percentage acquired corresponding to government-ownership to warrant any adjustment under our methodology. Further, we have preliminarily determined that it is appropriate to make an additional adjustment to USIMINAS and CSN's calculations to account for CVRD's 1997 partial privatization.

There are several facts in this case that warrant additional examination in the context of our privatization methodology. Because the purchase price of the company is a critical factor in our privatization methodology, the use of ''privatization currencies,'' i.e., certain existing government bonds, debt instruments, privatization certificates and frozen currencies, as payment for the shares of the companies, could have a significant impact on our analysis. Privatization currencies were used to acquire the vast majority of shares of producers of subject merchandise. The GOB accepted most of these currencies their face value; foreign debt and restructuring bonds (MYDFA's) were accepted at 75 percent of their face value. Petitioners have provided some indication that the market value of these currencies was not their face value; according to a press report, the market price for MYDFA's was about 30 percent of the face value. *See* Petitioner's October 22, 1998, submission, a public document on file in the CRU. We have made an adjustment to the purchase prices in order to take into account this information about the market value of the MYDFA's. However, to date, respondents have been unable to provide information on how the other privatization currencies were valued in secondary markets. Information we were able to gather from public sources, including the public record that was compiled in reaching the final determination in the countervailing duty investigation of certain steel products from Brazil, support petitioner's allegation that the privatization currencies were accepted by the GOB in the NPP for more than their market values. *See* Attachments to Calculation Memo dated February 12, 1999, public version on file in the CRU and *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil*, 68 FR 37295, (July 9, 1993) (*Certain Steel from Brazil*). Thus, some adjustment to the purchase price is warranted. Because we were not able to gather information on market values for each type of privatization currency in time for the preliminary determination, as facts available we have reduced the amount of the privatization currencies (with the exception of MYDFAs, which are discussed above), by a ratio reflecting the percentage difference between the value assigned to the MYDFAs and accepted by the GOB and the actual market value of the MYDFAs. We will continue to request information from the GOB and companies, about the market value of the privatization currencies, and plan to examine this issue in detail at verification.

Subsidies Valuation Information

Allocation Period

In the past, the Department has relied upon information from the U.S. Internal Revenue Service on the industry-specific AUL in determining the allocation period for non-recurring subsidies. *See GIA*, 58 FR at 37227. However, in *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against this allocation methodology. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the AUL of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States*, 929 F. Supp. 426, 439 (CIT 1996) (British Steel II). Thus, we intend to determine the allocation period for non-recurring subsidies using company-specific AUL data where reasonable and practicable. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16551 (April 7, 1997) (*Steel Plate from Sweden*).

In recent countervailing duty investigations, it has been our practice to follow the Court's decision in *British Steel II*, and to calculate a company-specific allocation period for all countervailable non-recurring subsidies where reasonable and practicable. In this investigation the Department, in accordance with *British Steel II*, requested that the respondents submit information relating to its average useful life of assets. However, our analysis of the data submitted by COSIPA, CSN, and USIMINAS regarding the AUL of their assets has revealed several problems.

All three companies have undergone multi-staged privatizations within the years relevant to this investigation. As a result of the changes in ownership, the firms have changed investment patterns, altered asset valuation methodologies and, in some cases, changed the amortization periods for certain assets after privatization. When the AUL amounts calculated on an annual basis for the years prior to the changes in ownership are compared to the AUL amounts calculated after the changes in ownership, dramatic differences become apparent. These changes have significant impacts upon the cumulative AUL calculated by the Department over a ten-year period (*i.e.*, 1988 through 1997).

Based on the concerns outlined above and in accordance with the Department's practice, we preliminarily determine that the calculations of company-specific AULs for COSIPA, CSN and USIMINAS should not be used to determine the appropriate allocation period for non-recurring subsidies. *See Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Germany*, 62 FR 54990, 54999 (October 22, 1997) and *Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 63 FR 63884, 63887 (November 17, 1998). Rather, for purposes of this preliminary determination, we are using 15 years as set out in the U.S. Internal Revenue Service (IRS) depreciation tables.

While we have not used company-specific AULs because of the concerns outlined above, even if we were to use the company-specific data submitted by respondents, the facts of this case pose additional concerns and possible inconsistencies. In particular, this investigation covers countervailable non-recurring subsidies benefitting COSIPA, CSN and USIMINAS, *i.e.*, GOB equity infusions. These same non-recurring subsidies to the same companies were previously found countervailable in *Certain Steel from Brazil*. *See Certain Steel from Brazil*, 68 FR at 37298. In that investigation, the Department allocated the benefits from these GOB investments over 15 years based on information from the IRS for the industry-specific average useful life of assets. Under current Department practice, previously allocated subsidies within the same proceeding are not given a new allocation period. Rather, it is our policy to retain the allocation period originally established for the subsidies in subsequent administrative reviews for the same proceeding. *See, e.g., Steel Plate from Sweden*, 62 FR 16551.

The issue we are presented with is whether the allocation period, once established for a subsidy to a company should change in different proceedings. If the allocation period did not change across proceedings, the same GOB equity infusions described above would be allocated over 15 years in both the current investigation, and any future administrative reviews of the *Certain Steel from Brazil* countervailing duty order. However, if we were to adopt different allocation periods for different proceedings, the same subsidy to the same company would be allocated over different periods.

We encourage parties to comment on this issue and whether an alternative approach may be more appropriate. One option may be to retain the allocation period of a subsidy previously investigated in a prior investigation, rather than assign a new company-specific allocation period based on company-specific AUL data. As described above, that would conform with our practice in administrative reviews of the same countervailing duty order. Another option would be to determine an individual company-specific AUL for each year in which a non-recurring subsidy is provided to a company, rather than to determine a company-specific AUL for non-recurring subsidies that could change with each investigation and result in different allocation periods for the same subsidy, as detailed above. We also welcome any additional comments on this issue not raised above.

Equityworthiness

In analyzing whether a company is equityworthy, the Department considers whether that company could have attracted investment capital from a reasonable private investor in the year of the government equity infusion based on the information available at that time. In this regard, the Department has consistently stated that a key factor for a company in attracting investment capital is its ability to generate a reasonable return on investment within a reasonable period of time. In making an equityworthiness determination, the Department may examine the following factors, among others:

1. Current and past indicators of a firm's financial condition calculated from that firm's financial statements and accounts,

2. Future financial prospects of the firm including market studies, economic forecasts, and project or loan appraisals,

3. Rates of return on equity in the three years prior to the government equity infusion,

4. Equity investment in the firm by private investors, and

5. Prospects in the marketplace for the product under consideration.

For a more detailed discussion of the Department's equityworthiness criteria, see the *GIA*, 58 FR at 37244 and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55104 (Oct. 21, 1997) (*Steel Wire Rod from Venezuela*).

The Department has examined the respondents' equityworthiness for each equity infusion covered by the initiation: for COSIPA 1977 through 1989 and 1992 through 1993, USIMINAS 1980 through 1988, and CSN 1977 through 1992; we note that because the Department has preliminarily determined that it is appropriate to use a 15 year allocation period for non-recurring subsidies, equity infusions provided in the years 1977 through 1982 do not provide a benefit in the POI. In a prior investigation we have found that COSIPA was unequityworthy in 1983–1989 and 1991, USIMINAS in 1983 through 1988, and CSN in 1983 through 1991. *See Certain Steel from Brazil*, 58 FR at 37296. No new information has been provided in this investigation that would cause us to reconsider these determinations.

In considering whether COSIPA was equityworthy in 1992 and1993, we examined information on the above-listed factors. To address factors one and three, we examined COSIPA's financial ratios for the three years prior to each of the infusions. We found that COSIPA incurred a net loss for every year under consideration except for 1989. COSIPA also had a negative return on equity, return on sales, and return on assets for each of the years under consideration except for 1989. The company's quick and current ratios fell steadily from 1989 through 1992, revealing increasing uncertainty in the company's financial health and ability to cover even short-term obligations.

With respect to the second factor, we note that the GOB made the equity investments into COSIPA on the recommendation of a private consultant contracted to evaluate the company's financial health prior to privatization. However, respondents have not demonstrated that this recommendation was premised on independent market studies, economic forecasts, or project appraisals that projected that COSIPA's future performance would improve significantly. Indeed, the basic purpose of the consultant's work was to inform the GOB of the requirements to make COSIPA a reasonable privatization candidate; this work was not undertaken to address the soundness of a contemplated additional investment in the company by the GOB for the purpose of the GOB's continued ownership and operation of the company. Thus, we do not find the fact that the investments were made on this private consultant's recommendation to be dispositive evidence of the company's equityworthiness.

COSIPA had only nominal private investors before the company's privatization. Therefore, there are no private investments that may be used to evaluate COSIPA's equityworthiness.

In light of COSIPA's unfavorable financial position throughout this period and its long-standing history of poor performance, it seems unlikely that a reasonable private investor would have made equity investments in the company. On this basis, we preliminarily determine that COSIPA was unequityworthy in 1992 and 1993.

In considering whether CSN was equityworthy in 1992, we examined information on the above-listed factors. To address factors one and three, we examined CSN's financial ratios for the years 1989, 1990, and 1991. The company's returns on equity and return on sales were negative in 1989 and 1990, including an extremely unfavorable return on sales in 1990. These ratios became positive in 1991, but both were quite low. The company's current ratio has fallen steadily since 1989. CSN's quick ratio vacillated during the period, but in each year remained well below 1 percent. While these ratios, on the whole, show a gradual improvement in 1991, we do not think this mild recovery would cause an inflow of private investment, considering the firm's history of poor results.

With respect to the second factor, we note that the GOB made the equity investment into CSN on the recommendation of a private consultant contracted to evaluate the company's financial health prior to privatization. However, respondents have not demonstrated that this recommendation was premised on independent market studies, economic forecasts, or project appraisals that projected that CSN's future performance would improve significantly. In addition, as with COSIPA the basic purpose of the consultant's work was to inform the GOB of the requirements to make CSN a reasonable privatization candidate, and did not address whether the contemplated investment was sound with respect to expected return and performance of the company. Thus, we do not find the fact that the investments were made on this private consultant's

recommendation to be dispositive evidence of the company's equityworthiness.

Through 1990, CSN had only nominal private investment, insufficient for evaluation in the Department's analysis. In 1991, approximately 12 percent of CSN's equity was transferred to the company's pension fund in exchange for eliminating CSN's debt with the pension fund. CSN's 1991 Annual Report reveals that this transaction was necessitated by CSN's inability to make required contributions to the pension fund. *See* Appendix A, section 12 to the Countervailing Duty Petition, public version on file in the CRU. Thus, this transaction is not considered evidence of the company's equityworthiness.

In light of CSN's unfavorable financial position throughout this period and its long-standing history of poor performance, it seems unlikely that a reasonable private investor would have made an equity investment in the company. On this basis, we preliminarily determine that CSN was unequityworthy in 1992.

Equity Methodology

In measuring the benefit from a government equity infusion to an unequityworthy company, the Department compares the price paid by the government for the equity to a market benchmark, if such a benchmark exists. A market benchmark can be obtained, for example, where the company's shares are publicly traded. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Spain*, 58 FR 37374, 37376 (July 9, 1993).

Where a market benchmark does not exist, the Department has determined in this investigation to continue to follow the methodology described in the *GIA*, 58 FR at 37239. Following this methodology, equity infusions made to unequityworthy companies are treated as grants. Use of the grant methodology for equity infusions into an unequityworthy company is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year based on the available information.

Creditworthiness

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. To do so, the Department examines whether the company received long-term commercial loans in the year in question, and, if necessary, the overall financial health and future prospects of the company. If a company receives long-term financing from commercial sources without government guarantees, that company will normally be considered creditworthy. In the absence of commercial borrowings, the Department examines the following factors, among others, to determine whether or not a firm is creditworthy:

1. Current and past indicators of a firm's financial health calculated from the firm's financial statements and accounts,

2. The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow, and

3. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals.

For a more detailed discussion of the Department's creditworthiness criteria, *see, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from the United Kingdom*, 58 FR 37393 (July 9, 1993).

The Department has previously determined that respondents were uncreditworthy in the following years: USIMINAS, 1983–1988; COSIPA, 1983–1989 and 1991; and CSN 1983–1991. *See Certain Steel from Brazil*, 58 FR at 37297. No new information has been presented in this investigation that would lead us to reconsider these findings.

COSIPA received no long-term financing from commercial sources in the years in question. Therefore, to determine whether COSIPA was creditworthy in 1992 and 1993, in accordance with the Department's past practice, we analyzed financial ratios for each of the three years prior to the year under examination. While COSIPA posted a profit in 1989, it quickly reverted to a pattern of increasing losses from 1990 through 1992. Further, the company's low and deteriorating current and quick ratios from 1989 through 1992 reveal an increasing lack of creditor protection that would likely cause doubts about COSIPA's ability to meet its debt obligations. The declining interest coverage ratio over this period also points to increasing vulnerability in the company's financial position. For these reasons, it is doubtful that the company could have obtained financing at commercial interest rates during these years. Therefore, we preliminarily determine that COSIPA was uncreditworthy in 1992 and 1993.

CSN received one small commercial loan in 1992, however, the terms and insignificant principal amount of this loan render it inconclusive in determining whether CSN was creditworthy in 1992. Therefore, to determine whether CSN was creditworthy in 1992, we also analyzed financial data for the prior three years. CSN incurred a loss in 1989 and a significant loss in 1990 but recovered to post a small profit in 1991. The company's current ratio decreased over this period, remaining well below 1.0. CSN's quick ratio vacillated over these years, but remained extremely low, ranging from 0.12 to 0.17. CSN's interest coverage ratio also shows a downward trend over these years. In 1990 and 1991, this ratio is extremely low, and shows that the company had difficulty managing its financial obligations. For these reasons, it is doubtful that the company could have obtained long-term financing at commercial interest rates. Therefore, we preliminarily determine that CSN was uncreditworthy in 1992.

Discount Rates

In the years relevant to this investigation through 1994, Brazil has experienced persistent and high inflation. There were no long-term fixed-rate commercial loans made in domestic currencies during those years that could be used as discount rates. As in the *Certain Steel from Brazil* investigation, we have determined that the most reasonable way to account for the high inflation in the Brazilian economy through 1994, and the lack of an appropriate Brazilian discount rate, is to convert the non-recurring subsidies into U.S. dollars based on the exchange rate applicable in the month the subsidies were granted, and then to apply, as the discount rate, a long-term dollar lending rate. Therefore, for our discount rate, we used data for U.S. dollar lending in Brazil for long-term non-guaranteed loans from private lenders, as published in the World Bank Debt Tables: External Finance for Developing Countries. This conforms with our practice in *Certain Steel from Brazil* (58 FR at 37298) and *Steel Wire Rod from Venezuela* (62 FR at 55019 and 55023). Because we have preliminarily determined CSN, COSIPA and USIMINAS to be uncreditworthy as described above, we added to the discount rates a risk premium equal to 12 percent of the U.S. prime rate for each of the years the companies were determined to be uncreditworthy.

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined To Be Countervailable

A. Pre-1992 Equity Infusions

The GOB, through SIDERBRAS, provided equity infusions to USIMINAS (1983 through 1988), COSIPA (1983 through 1989 and 1991) and CSN (1983 through 1991) that have previously been investigated by the Department. *See Certain Steel from Brazil*, 58 FR at 37298.

We preliminarily determine that under section 771(5)(E)(i) of the Act, the equity infusions into USIMINAS, COSIPA and CSN were not consistent with the usual investment practices of private investors and confer a benefit in the amount of each infusion (*see* ''Equityworthiness'' section above). These equity infusions are specific within the meaning of section 771(5A)(D) of the Act because they were limited to each of the companies. Accordingly, we find that the pre-1992 equity infusions are countervailable subsidies within the meaning of section 771(5) of the Act.

As explained in the ''Equity Methodology'' section above, we have treated equity infusions into unequityworthy companies as grants given in the year the infusion was received because no market benchmark exists. We have further determined these infusions to be non-recurring subsidies because each required separate authorization from SIDERBRAS, the shareholder. Because USIMINAS, COSIPA and CSN were uncreditworthy in the year of receipt, we applied a discount rate that included a risk premium. Since USIMINAS, COSIPA and CSN have been privatized, we followed the methodology outlined in the ''Change in Ownership'' section above to determine the amount of each equity infusion attributable to the companies after privatization. For CSN, we summed the benefits allocable to the POI from all equity infusions and divided by CSN's total sales during the POI. For USIMINAS/COSIPA, we summed the benefits allocable to the POI from all of the equity infusions and divided this amount by the combined total sales of USIMINAS/COSIPA during the POI. On this basis, we preliminarily determine the net subsidy to be 5.63 percent ad valorem for CSN and 5.65 percent ad valorem for USIMINAS/COSIPA.

B. GOB Debt-to-Equity Conversions Provided to COSIPA in 1992 and 1993

In 1990, the GOB decided to liquidate SIDERBRAS and to include the SIDERBRAS operating companies, including respondents, in its National Privatization Program. The NPP was a major initiative proposed by President Collor that was part of the GOB's larger strategy to liberalize the Brazilian economy. Under the NPP, approved in Law 8031 of April 12, 1990, a general framework was established to govern all privatizations. Two entities were charged with oversight of the process: the Privatization Committee and the Banco Nacionale de Desenvolvimento Economico e Social (BNDES), which acted as the general coordinator. The Privatization Committee, composed of government and private sector representatives, was responsible for approving the conditions of sale, guidelines and the minimum price for each privatization. BNDES commissioned three consultants to make recommendations with respect to each company undergoing privatization: two consultants to make an economic assessment of the company including its competitiveness and to recommend a minimum price and one consultant to act as an independent auditor.

One of the consultants who examined COSIPA's financial health and competitiveness recommended that financial adjustments be made to the company before privatization including debt-to-equity conversions and deferring certain tax liabilities (see ''Negotiated Deferrals of Tax Liabilities'' in the section ''Programs Preliminarily Determined to be Non-Countervailable'' below). In accordance with this consultant's recommendation, the GOB made two debt-to-equity conversions in 1992 and 1993 in preparation for COSIPA's privatization.

We preliminarily determine that pursuant to section 771(5)(E)(i) of the Act, these debt-to-equity conversions were not consistent with the usual investment practices of private investors and confer a benefit in the amount of each conversion (*see* ''Equityworthiness'' section above). These debt-to-equity conversions are specific within the meaning of section 771(5A)(D) of the Act because they were limited to COSIPA. Accordingly, we find that the GOB debt-to-equity conversions provided to COSIPA in 1992 and 1993 are countervailable subsidies within the meaning of section 771(5) of the Act.

As explained in the ''Equity Methodology'' section above, we have treated each debt-to-equity conversion as a grant given in the year the conversion was made. We have further determined that these conversions are non-recurring subsidies because they were specifically approved by the GOB. Because COSIPA was uncreditworthy in the years of receipt, we applied a discount rate that included a risk premium. Since COSIPA has been privatized, we followed the methodology outlined in the ''Change in Ownership'' section above to determine the amount of each debt-to-equity conversion attributable to the company after privatization. We divided the benefit allocable to the POI from these debt-to-equity conversions by the combined total sales of USIMINAS/COSIPA. On this basis, we preliminarily determine the net subsidy to be 3.80 percent ad valorem for USIMINAS/COSIPA.

C. GOB Equity Infusion to CSN in 1992

As discussed above, under the GOB's National Privatization program, companies were privatized under the supervision of BNDES and the Privatization Committee. In accordance with the established privatization procedures, BNDES commissioned three consultants with respect to the privatization of CSN: two to analyze the firm's financial performance, make recommendations, and formulate the minimum price and one to act as an independent auditor. One of the consultants, after analysis of CSN's financial data, recommended that additional capital be provided to the firm in advance of its privatization. The GOB followed this recommendation and made a pre-privatization equity infusion in 1992.

We preliminarily determine that, pursuant to section 771(5)(E)(i) of the Act, this equity infusion was not consistent with the usual investment practices of private investors and confers a benefit in the amount of the infusion (*see* ''Equityworthiness'' section above). This infusion is specific within the meaning of section 771(5A)(D) of the Act because it was limited to CSN. Accordingly, we find that the GOB equity infusion provided to CSN in 1992 is a countervailable subsidy within the meaning of section 771(5) of the Act.

As explained in the ''Equity Methodology'' section above, we have treated this equity infusion as a grant given in the year the infusion was received. We have further determined that this infusion is a non-recurring subsidy because it required separate authorization from the GOB. Because CSN was uncreditworthy in the year of receipt, we applied a discount rate that included a risk premium. Since CSN was privatized, we followed the methodology outlined in the ''Change in Ownership'' section above to determine the amount of each equity infusion attributable to the company after privatization. We divided the benefit

allocable to the POI from the equity infusion by CSN's total sales during the POI. On this basis, we preliminarily determine the net subsidy to be 0.99 percent ad valorem for CSN.

II. Program Preliminarily Determined To Be Non-Countervailable

Negotiated Deferrals of Tax Liabilities

As discussed above, one of the privatization consultants recommended that COSIPA negotiate with the various tax authorities in order to arrange to pay its large tax arrears in deferred installments. COSIPA petitioned four different tax authorities in order to arrange for installment payments for ten different types of taxes owed. In addition, CSN petitioned to arrange for installment payments for one tax liability.

Each of the tax agencies, the Revenue Service, Social Security Authority, State of Sao Paulo, and City authority has established legal procedures for arranging installment payments for delinquent tax payers. The authorities established these rules in order to collect tax arrears without resorting to legal action. These procedures were contained in Law 8383/91, Law 8620/93 and Decree 612/92, Decree 33.118/91 and Law 1383/83, respectively, and specified penalties, interest rates, and in some cases, the maximum repayment term. For example, law 8383/91 that governs the Revenue Service's operations and applies to six of the ten types of taxes COSIPA deferred and the tax that CSN deferred, specifies that fines of 20 percent and interest of one per cent per month will be charged and that all amounts will be subject to monetary correction, i.e., adjustments for inflation. To the extent that terms, such as the maximum repayment period, were not covered in the agency's laws and regulations, they were negotiated by COSIPA or CSN and the relevant tax authority. Once the parties completed negotiations, the authority would endorse the petition and, in some cases, execute a separate agreement.

When determining whether a program is countervailable, we must ascertain whether it provides benefits to a specific enterprise, industry, or group thereof within the meaning of section 771(5A)(D) of the Act. By comparing the terms included in the agencies' laws and regulations and the terms provided to COSIPA and CSN, we were able to conclude that the respondent companies received the same terms as those specified in the laws. Therefore, as the GOB did not favor COSIPA or CSN over other companies, we turned to an examination of the general programs themselves in order to determine whether they are specific. We examined whether the programs are *de jure* specific and found that the laws do not limit eligibility to an enterprise, industry, or group thereof. We then analyzed whether the program meets the criteria for *de facto* specificity. The GOB indicated in its response that ''[d]eferred payment terms are generally available for all companies that have outstanding tax obligations to the underlying tax authority.'' *See* GOB Supplemental Questionnaire Response dated January 12, 1999, public version on file in the CRU. Further, the GOB stated that tax deferral petitions are automatically approved by the authorities as long as they conform with the establishing laws and regulations and as stated above neither the laws nor regulations provide differential or special treatment to any company or industry. Further, the GOB has provided information on the number of companies that petitioned the Revenue Service to renegotiate taxes; in 1993 and 1994, the years that COSIPA and CSN petitioned the Revenue Service to defer payments on various taxes, 91,440 and 139,596 taxpayers received deferred payment schedules for tax arrears. *See* GOB Supplemental Questionnaire Response dated February 8, 1999, public version on file in the CRU. While the number of companies that receive benefits under a program is not dispositive as to a program's non-specificity, the extremely large number of companies receiving deferrals indicates that a broad range of companies and industries received benefits under the program. Therefore, based on the response, there is no reason to believe that these tax deferrals are limited to a specific enterprise, industry or group thereof, and we preliminarily determine that these tax deferrals are not countervailable. We will continue to gather information about the *de facto* distribution of benefits under this program and carefully examine this issue at verification.

III. Program Preliminarily Determined Not To Exist

GOB Equity Infusions to COSIPA in 1992 and 1993

The Department included two programs in its initiation relating to benefits provided to COSIPA in advance of the company's privatization: debt assumptions and equity infusions. According to information provided by respondents, there were no equity infusions, *per se*. Instead, all benefits were in the form of debt assumptions that were converted into equity and have been addressed in the ''GOB Debt-to-Equity Conversions Provided to COSIPA in 1992 and 1993'' section above. Accordingly, we preliminarily determine that the separate ''GOB Equity Infusions to COSIPA in 1992 and 1993'' program does not exist.

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated individual rates for each of the companies under investigation. As discussed in the ''Affiliated Parties'' section of this notice, we are treating USIMINAS/COSIPA as one company and have calculated a single rate for USIMINAS/COSIPA. To calculate the ''all others'' rate, we weight-averaged the company rates by each company's exports of the subject merchandise to the United States.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise from Brazil, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. This suspension will remain in effect until further notice.

AD VALOREM RATES

Producer/exporter	Net subsidy rate %
USIMINAS/COSIPA	9.45
CSN	6.62
All Others	7.85

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of the preliminary determination at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 55 days from the date of publication of the preliminary determination. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: February 12, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–4198 Filed 2–18–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, March 9, 1999 from 8:30 a.m. to 5:00 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include NIST update and Discussion of Legislative Mandates; Advanced Technology Program Retrospective; Building and Fire Research Laboratory Priority Setting; Information Technology Laboratory's Software Testing; NIST's Role in Wireless Technology; and a lab tour of the Information Technology Laboratory's Electronic Books project. Discussions scheduled to begin at 8:30 a.m. and to end at 9:10 a.m. on March 9, 1999, on staffing of management positions at NIST and the NIST budget, including funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership will be closed.

DATES: The meeting will convene March 9, 1999, at 8:30 a.m. and will adjourn at 5:00 p.m. on March 9, 1999.

ADDRESSES: The meeting will be held in the Employees' Lounge (seating capacity 80, includes 38 participants), Administration Building, at NIST, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Brian C. Belanger, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–4720.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on August 7, 1998, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the Advanced Technology Program and the Manufacturing Extension Partnership Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: February 12, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–4188 Filed 2–18–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Partially Closed Meeting of the Manufacturing Extension Partnership National Advisory Board

AGENCY: Natonal Institute of Standards and Technology, Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards of Technology's (NIST's) Manufacturing Extension Partnership National Advisory Board (MEPNAB) will meet to hold a meeting on Wednesday, May 12, 1999. The MEPNAB is composed of nine members appointed by the Director

of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was set up, under the direction of the Director of the NIST, to fill a need for outside input on MEP. MEP is a unique program consisting of centers in all 50 states and Puerto Rico. The centers have been created by a state, federal and local partnership. The Board works closely with the MEP to provide input and advice on MEP's programs, plans and policies. The purpose of this meeting is to delve into areas the Board selected at the previous meeting. The agenda includes a report on the system identity project, an update on the status of center reviews, a briefing on continuous center improvement and training, and an update on the status of the Y2K outreach. The portion of the meeting, which involves personnel and proprietary budget information, will be closed to the public. All other portions of the meeting will be open to the public.

DATES AND ADDRESSES: The meeting will convene on May 12, 1999, at 8:00 a.m. and will adjourn at 3:30 p.m. and will be held at the National Institute of Standards and Technology, Building 101, 10th Floor, Gaithersburg, Maryland. The closed portion of the meeting is scheduled from 8:00–9:30 a.m.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration with the concurrence of the General Counsel formally determined on December 21, 1998, pursuant to Section 10(d) of the Federal Advisory Committee Act, that these portions of the meeting may be properly closed because they are concerned with matters that are within the purview of 5 U.S.C. 552(c)(4), (6) and (9)(b). A copy of the determination is available for public inspection in the Central Reference and Records Inspection Facility, Room 6219, Main Commerce.

MEP's services to smaller manufacturers address the needs of the national market as well as the unique needs of each company. Since MEP is committed to providing this type of individualized service through its centers, the program requires the perspective of locally based experts to be incorporated into its national plans. The MEPNAB was established at the direction of the NIST Director to maintain MEP's focus on local and market-based needs. The MEPNAB was approved on October 24, 1996, in accordance with the Federal Advisory Committee Act, 5 U.S.C. app.2., to provide advice on MEP programs, plans, and policies; to assess the soundness of MEP plans and strategies; to assess the current performance against MEP program plans, and to function in an advisory capacity. The Board will meet three times a year and reports to the Director of NIST. This will be the second meeting of the MEPNAB in 1999.

FOR FURTHER INFORMATION CONTACT: Linda Acierto, Assistant to the Director for Policy, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg MD 20899, telephone number (301) 975–5033.

Dated: February 10, 1999.

Karen H. Brown,

Deputy Director, NIST.

[FR Doc. 99–4189 Filed 2–18–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012599A]

Notice of Availability of Final Stock Assessment Reports

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

ACTION: Notice of completion and availability of revised marine mammal stock assessment reports; response to comments.

SUMMARY: NMFS has incorporated public comments into revisions of marine mammal stock assessment reports (SARs). The final revisions, which were initiated in 1998, are now complete, and copies of the revised reports are available to the public.

ADDRESSES: Send requests for printed copies of reports to: Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments. Copies of the regional reports may also be requested from Douglas P. DeMaster, Alaska Fisheries Science Center (F/AKC), NMFS, 7600 Sand Point Way, NE BIN 15700, Seattle, WA 98115–0070 (Alaska); Richard Merrick, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543 (Atlantic); and Irma Lagomarsino, Southwest Regional Office (F/SWO3), NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802–4213 (Pacific). Electronic copies of the reports can be found at (http://www.nmfs.gov/prot_res/mammals/sa_rep/sar.html).

FOR FURTHER INFORMATION CONTACT: Cathy Eisele, Office of Protected Resources, NMFS, at (301) 713–2322, Douglas P. DeMaster (206) 526–4045, regarding Alaska regional stock assessments; Irma Lagomarsino, (310) 980–4020, regarding Pacific regional stock assessments; or Richard Merrick, (508) 495–2311, or Steven Swartz, (305) 361–4487, regarding Atlantic regional stock assessments.

SUPPLEMENTARY INFORMATION: Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals that occurs in waters under the jurisdiction of the United States. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock.

Marine mammal SARs were finalized for 1995 (August 25 1995, 60 FR 44308) and for 1996 (January 2 1998, 63 FR 60). Draft 1998 SARs were completed, with a request for public comments, on July 24, 1998 (63 FR 39814). During and subsequent to the public comment period, NMFS consulted with Scientific Review Groups (SRGs), established under the MMPA, to discuss their comments and the public comments on the draft SARs. NMFS received public comments from a variety of sources, including state and Federal agencies, private citizens, conservation organizations, fishing industry organizations, and other stakeholder groups. Following discussions with the SRGs, the comments were reviewed and incorporated into these final reports. Copies of the revised 1998 marine mammal SARs are now available to the public. Electronic copies are currently available, and printed copies may be obtained at request (see ADDRESSES).

Response to Comments

The majority of the comments were about details of specific stock assessment reports. These comments are discussed here by region:

Comments on the Alaska Stock Assessment Reports

Comment 1: It would be helpful to have a single table in all the Alaska reports that presented all sources of human related mortalities.

Response: In general, the best information on human-related mortality

is based on observer data. In this case, a mortality can be assigned to a specific fishery. Mortality information from strandings or reports of vandalism is not necessarily due to fishery interactions and, if so, is difficult to assign to a specific fishery. Because the table presenting the information on fishery interactions is already complicated, it was thought that additional information, where available, is better presented in the text. Also, regarding evaluation of the zero mortality rate goal, only those mortalities incidental to commercial fishing are to be considered. Therefore, a table of all mortalities might be confusing to the reader in trying to understand which subset of the mortality data is being used in a particular instance.

Comment 2: Regarding the maximum net productivity rate (R_{max}) for the central stock of humpback whales, the rate should be higher than 0.04. The rate of 0.04 is unduly conservative, as estimates of R_{max} for Atlantic humpback whales are as high as 0.14.

Response: There are no reliable estimates of R_{max} for any stock of humpback whale in U.S. waters. For all other stocks of humpback whales in U.S. waters, the recommended value for R_{max} was 0.04. NMFS agrees that available data for several other stocks of humpback whales indicate that, for those stocks, maximum net production may exceed 0.04. However, without information on maximum rates of increase from any of the North Pacific stocks, an R_{max} of 0.04 seems appropriate. This, too, was the conclusion of the Alaska SRG.

Comment 3: The Recovery Factor for the central stock of humpback whales should be increased to 0.3.

Response: Unlike the Bering-Chukchi-Beaufort stock of bowhead whale, where a long-time series of abundance estimates are available and a reliable estimate of trends in abundance exists, relatively little is known about the population dynamics of the central North Pacific stock of humpback whale. What is known is that this stock remains severely depleted. Therefore, until further information becomes available on current trends in abundance, a recovery factor of 0.1 is appropriate.

Comment 4: The Recovery Factor for sperm whales should be increased to something between 0.5 and 1.0.

Response: The guidelines for setting recovery factors state that a recovery factor of 0.1 should, in general, be used for stocks listed as endangered. Very little is known about stock structure of sperm whales in the North Pacific; therefore, very little can be said about stock size. Further, there is very good evidence to indicate that most or all of the stocks of sperm whales in the North Pacific were severely depleted as a result of commercial whaling. Therefore, a recovery factor of 0.1 is appropriate at this time.

Comment 5: Given that an R_{max} of less than 1 percent is likely, the R_{max} for sperm whales should be 1 percent, not 4 percent.

Response: There are no reliable estimates of R_{max} for any population of sperm whales, including populations of sperm whale in the North Pacific. NMFS does not consider that an estimate of less than 1 percent is a credible estimate for the rate of increase for a population of sperm whale that is recovering from very low levels.

Comment 6: Regarding a minimum population estimate (N_{min}) for the Cook Inlet stock of beluga whale, the estimate should be less than 834 (i.e., the best estimate of abundance).

Response: NMFS agrees. The N_{min} used in the Potential Biological Removal (PBR) calculation was 712.

Comment 7: Regarding the Cook Inlet stock of beluga whale, it is not clear how using median counts from surveys designed to provide estimates of abundance made the results more comparable to other surveys that had only one pass over a whale group.

Response: Prior to the initiation of the survey protocol adopted in 1994, surveys to determine beluga abundance typically made a single pass over aggregations of whales during which time the aggregation was counted. Often, counts were made by a single observer. In contrast, the 1994 protocol involved multiple passes, where multiple observers made independent counts of the aggregation. Because the actual number of animals at the surface that are available to be counted varies per pass (note: the water in the northern part of Cook Inlet where most of the beluga whales are counted is very muddy and does not allow observers to follow whales as they dive below the surface), the use of the maximum count from multiple passes and multiple observers would be biased relative to the count of a single observer on an individual pass. Therefore, an average of counts was used in the analysis of the data collected in 1994 and thereafter. Because the shape of the distribution of counts was rather flat (as opposed to being bell shaped) medians were used to reflect the central tendency of the count statistic.

Comment 8: A Recovery Factor of 1.0 for the Cook Inlet stock of beluga whale is inappropriate. It was apparently used to help deflect concern over the level of the native harvest relative to stock size.

Response: This is a misinterpretation of the intent of NMFS. NMFS has been working closely with the Native community in the Cook Inlet Region regarding the co-management of this stock. Over the past 4 years, efforts have been undertaken to attempt to develop sustainable harvest limits through the co-management process. To date, these efforts have been unsuccessful. It should be remembered that the PBR approach was not designed to manage Native subsistence harvest in Alaska. Further, beluga whales are not listed as depleted under the MMPA or endangered/threatened under the Endangered Species Act (ESA) (although they are a candidate species for listing under the ESA). Therefore, NMFS has extremely limited authority in managing Native harvest levels at this time. Until the agency determines that co-management efforts alone are insufficient to protect this stock from extirpation and lists this stock as depleted, threatened, or endangered, a recovery factor of 1.0 is most consistent with the existing generic agreement regarding co-management negotiated between the Indigenous People's Council for Marine Mammals, FWS, and NMFS (signed August 27,1997).

Comment 9: Regarding the eastern North Pacific northern resident stock of killer whales, why are the estimates of observed mortality and estimated mortality equal, when the level of observer coverage was less than 100 percent?

Response: This was due to rounding. For example, if one mortality was observed and the coverage rate was 80 percent, the estimated mortality for the entire fishery would be 1.25 animals. This approach should not produce biased estimates of mean mortality, when data are averaged over a 5-year period.

Comment 10: Some indication is required as to whether or not the techniques used to calculate the abundance correction factor for western Steller sea lions took into account time of year of the surveys, time of day, weather conditions, survey methodology, and other factors.

Response: The references included in the section of the text on population size provide this information. If all of the details regarding all of the key parameters presented in the SARs were included, the length of the SARs would become unmanageable. Individuals or agencies can request copies of any of the references cited in the SARs from the appropriate Science Center. The same response applies to similar comments regarding the inclusion of details contained in cited references.

Comment 11: In the status report on the eastern stock of Steller sea lion, the actual number of communities within the range of this stock should be cited.

Response: Unfortunately, the number of communities in which interviews were conducted that occur within the range of this stock was not constant among survey years (1992–96). Sixteen was the average number of communities that were interviewed during this time period. Therefore, the phrase ''approximately 16 of the interviewed communities'' seems appropriate.

Comment 12: The Southeast Alaska population of harbor seals should remain treated as a separate stock.

Response: NMFS agrees.

Comment 13: The Recovery Factor for the southeast stock of harbor seal should be less than 1.0.

Response: There are strong indications that this stock is increasing despite the current harvest level for Native subsistence. This increase is thought to have occurred since at least 1983. Therefore, the use of a recovery factor of 1.0 is appropriate. This was the conclusion of the Alaska SRG.

Comment 14: The Gulf of Alaska stock of harbor seal should be considered a strategic stock because the PBR for the stock is 868, while the estimate for human-caused mortalities was likely not significantly different (824 with an unspecified coefficient of variation on the estimate).

Response: NMFS accepts the comment that the PBR is not likely to be statistically greater than the estimate for human-related mortalities (using traditional type 1 error levels). However, NMFS has not adopted such an approach in the classification of a stock as strategic under the MMPA. It should be noted that, in the simulations reported by Wade (1998), it was assumed that the distribution for the number of animals removed annually was centered on the PBR. Therefore, the PBR management approach should perform adequately in the situation where the estimated annual mortality level is close to the PBR.

Comment 15: If there has been a significant decline in population numbers, the Gulf of Alaska stock of harbor seal may be depleted. Consideration of a designation as depleted seems appropriate.

Response: As noted in the section on Current Population Trend, this stock, despite positive growth in some areas, remains small compared to its size in the 1970s and 1980s. Scientists at the Alaska Fisheries Science Center are currently undertaking a review of the status of this stock. Based on the results of this research, NMFS will develop a recommendation for classification of this stock as healthy or depleted (as defined in the MMPA), or as endangered or threatened (as defined in the ESA) and should be listed. The status review should be completed by the end of fiscal year 1999. A recommendation regarding status should be available early in 2000.

Comment 16: NMFS should use a Recovery Factor of 0.1 for the western stock of Steller sea lion.

Response: If a recovery factor of 0.15 is used to set the PBR for a depleted population with an R_{max} of 0.12 and if the PBR is not exceeded, the time to recovery will not be significantly different (i.e., greater than 10 percent) from a population with a PBR of zero from which no removals are allowed. Based on this information, and the recommendations of the Alaska SRG, a recovery factor of 0.15 was used in the 1998 SARs. However, it should be noted that, in the next revision of the SARs, NMFS has proposed using a recovery factor of 0.1 for the western stock of Steller sea lions. This change was endorsed by the Alaska SRG at its most recent meeting in November 1998.

Comment 17: Mortality of Steller sea lions was observed in the Bering Sea trawl fishery during unmonitored hauls, but was not included in any estimates of fishery-related deaths. These mortalities should be included as at least minimum estimates of mortality.

Response: In general, adding mortalities that were observed in unmonitored hauls to the extrapolated estimate of total mortality (based on observed mortalities and the fraction of the hauls that were observed) will positively bias the estimate. For that reason, such data are not used in estimating total mortality for a given fishery. However, in certain situations, observed mortalities from unmonitored hauls are used. For example, if only one mortality was observed in an unmonitored haul (and no mortalities were observed in the monitored hauls), the estimate of total mortality for that fishery would be one (not zero). In general, observed mortalities from unmonitored hauls are used in the final estimate of total mortality whenever the total number of observed mortalities exceeds the estimated total mortality, based on data from monitored hauls and on the fraction of hauls observed.

Comment 18: The Native harvest from the western stock of Steller sea lions is inappropriately high.

Response: The mean annual harvest between 1993 and 1995 was 412 animals, whereas the PBR for this stock (based on a PBR of 0.15) is 350. The estimated fraction of the harvest that was female was 19 percent. Therefore, the removal of an estimated 78 females per year from a conservative estimate of female abundance for this stock of 19,400 (or approximately 0.4 percent) should not adversely affect its recovery. Further, the Native hunters in Alaska that utilize animals from this stock are very aware of declines in Steller sea lion abundance. This is reflected in the general decline of harvested animals from 1992 (549 animals) to 1995 (339 animals). This decline was caused by changes in the hunting practices of Native hunters, and not because of the unavailability of animals.

Comment 19: Mortality due to shootings of animals from the eastern stock of Steller sea lions should be included in the total mortality estimate.

Response: NMFS agrees, and made this change.

Comments on the Atlantic Stock Assessment Reports

Comment 20: Closed fisheries (i.e., Atlantic pelagic pair trawl) should be excluded from the calculation of the annual fishery-related mortality.

Response: The pair-trawl fishery mortality estimates were not excluded from the analysis because the observed fishery (1992–95) operated within the 5-year (1992–96) window used to determine the annual fishery-related mortality. This issue was discussed at the November 1998 Scientific Review Group Meeting, and it was agreed that the pair-trawl bycatch will be excluded from the calculation of the annual fishery-related mortality in future revisions of the SARs. Further, inclusion of the pair-trawl data (mortalities of common dolphin, pilot whales, Risso's dolphin, and offshore bottlenose dolphin) in the 1998 SARs does not affect the status designation for any stock.

Comment 21: The 1997 and 1998 data/information pertaining to the Atlantic pelagic drift gillnet should be included, and the status of several stocks should be revised accordingly.

Response: This information was not yet available when these revisions were drafted. The 1997 information will be incorporated in the next revision of the SARs. Annually, the status of each strategic stock is reviewed, based on the most current information that can be incorporated into the SARs.

Comment 22: Information contained in the NMFS's Section 7 Consultation on the Atlantic Pelagic Fishery (May 1997), and the document Managing the Nation's Bycatch (June 1998) should be incorporated into the 1998 SARs.

Response: Information on observed bycatch of one humpback whale, one minke whale, and six pilot whales in

the 1996 tuna purse seine fishery have been incorporated into the SARs. Because there were no observed mortalities, these data will not appear in the SAR tables that present annual fishery-related mortality.

Comment 23: References to now non-operational Canadian groundfish fisheries are inaccurate because the Canadian Government allowed limited harvests in 1997 and 1998.

Response: The Northeast Fisheries Science Center (NEFSC) has recently requested information from Canadian scientists, regarding changes in Canadian marine mammal regulations and the current status of several fisheries. The NEFSC plans to incorporate the new information in the next revision of the SARs.

Comment 24: The Atlantic SARs do not contain information on mortality in Canadian waters or data from strandings and fisher self-reports (in contrast to Alaska SARs which contain this information).

Response: Both NEFSC and the Southeast Fisheries Science Center (SEFSC) staff involved in preparing the Atlantic and Gulf of Mexico assessments will be participating in the spring 1999 joint SRG meeting. One of the discussion items will be consistency of the SARs. Also, NEFSC and SEFSC staff will review the format of the Alaska SARs. Several of the Atlantic SARs contain information on fishery-related mortality in Canadian waters. Once the northeast strandings data are computerized and verified, tabular summaries will be included in future SARs.

Comment 25: Information on animals stranded or entangled in fishing gear is provided for some species, but these data have not been included in estimates of mortality and serious injury.

Response: When NMFS releases final guidelines for determining serious injuries, these will be used to determine what fraction of the injured and released alive animals will be added to the estimates of annual mortality. For now, except for a few species (as described in the SARs), injured animals released alive are not considered seriously injured (an injury likely to lead to mortality).

Comment 26: The ''text obs. data/ logbook'' is given in the fishery mortality tables under the column heading ''Data Type'', but it would be preferable to separate observer data from self-reported data.

Response: In those assessments under that heading, logbook data were only used in the determination of fishing effort; there are appropriate footnotes in the table columns explaining this.

Comment 27: There is new information available on the status of the North Atlantic right whale population that was not included in the reports.

Response: At the time the SARs were being finalized, the work referred to had yet to be peer reviewed. Given that such a review is now occurring, NMFS anticipates incorporating any such new information, if relevant, in the next revisions of the SARs.

Comment 28: Other human-related mortalities of north Atlantic right whales beyond ship strike and entanglement, such as those from 1996, should be reported in the mortality table and text.

Response: There are no conclusive data on human-related mortalities that do not relate to these two sources; therefore, the section on other human related mortality has been deleted from the text. The table lists only those animals for which human-related mortality or serious injury has been determined on the basis of the best available evidence. Since nothing this definitive can be stated regarding the other right whale mortalities from 1996, they remain listed within the text rather than the table.

Comment 29: No Canadian right whale mortality data were included in the report. Also, this was inconsistent with other transboundary stock reports (i.e., minke whale).

Response: NMFS agrees, and will address this point in the next revision of the SARs.

Comment 30: The potential impact of whale watching vessels should be included in the humpback whale SAR.

Response: A line was added regarding the potential for habitat disturbance from this source; it was noted that humpback whales have not been routinely hit by whale-watching vessels in the Massachusetts Bay region or elsewhere.

Comment 31: Information on fishery interactions of blue whales should be included in the SAR.

Response: A sentence has been added to reflect this concern.

Comment 32: Fishery-related mortality and serious injury information of western North Atlantic fin whales should be reviewed and summarized in a table.

Response: The number of confirmed records of fishery-related mortality and serious injury is insufficient at this time for a table to be produced. A review of fin whale records was conducted. Logistical problems relating to gathering original data from a variety of sources and the time required to edit these records and make Serious Injury determinations have precluded a definitive assessment at this time. However, a revised provisional estimate of mortality has been included in the SAR, which is given with the understanding that changes may be required in the future once all records have been vetted. NMFS anticipates this issue will be resolved in the next revision of the SARs.

Comment 33: The proposed International Whaling Commission (IWC) stock definition for western North Atlantic sei whales should be described.

Response: The comment prompted a review and revision of the management unit being used for Atlantic sei whales. The IWC definition follows that of Mitchell, who (rather than using a single western North Atlantic stock) hypothesizes the existence of two stocks, Nova Scotia and Labrador Sea. NMFS has included this definition in the amended text and has changed the management unit used in this section from western North Atlantic stock to Nova Scotia stock.

Comment 34: The basis for the determination that the human-caused mortality of Atlantic sei whales is insignificant should be explained.

Response: The reason for the belief concerning human-related mortality being insignificant is due to the rarity of reports of such mortality for this species. The text has been amended to clarify this.

Comment 35: Documented mortalities of minke whales from strandings, entanglements, and ship strikes should be included in Table 2 in the SAR.

Response: Table 2 has been used to summarize takes of species that were observed during a NMFS observer program. For some species (large whales in particular), another table has been included that describes in detail the strandings, entanglements and ship strikes of that species. Because such species as right whales are more critical, all the strandings, entanglement and ship strike records of minke whales have not yet been verified. Minke whale records are currently being validated; it is expected that a detailed table for minke whales will be included in the next revision of the SARs. It should also be noted that records of stranded or entangled animals that have gear from a fishery that is being observed cannot simply be added onto an estimated mortality for that fishery. The reason for this is that interaction is part of the estimated mortality that is already reported in Table 2 in the SAR.

Comment 36: The statement in the Atlantic minke whale SAR that,

between 1979 and 1990, it was estimated that 15 percent of the Canadian minke whale takes were in salmon gillnets was questioned.

Response: To clarify, the text has been modified to state ''In Newfoundland and Labrador, between 1979 and 1990, it was estimated that 15 percent of the Canadian minke whale takes were in salmon gillnets, where a total of 124 minke whale interactions were documented in cod traps, groundfish gillnets, salmon gillnets, other gillnets and other traps.''

Comment 37: The recovery factor used to calculate PBR for Atlantic minke whales was incorrect.

Response: This typographical error, along with other such errors that were pointed out, has been corrected. Similar typographical errors for long-finned and short-finned pilot whales, Atlantic spotted dolphins, Pantropical spotted dolphins, common dolphin, Risso's dolphin, offshore bottlenose dolphin, and humpback whales were also corrected.

Comment 38: Data on entangled Atlantic sperm whales should be presented in a tabular format similar to that used by the Alaska region.

Response: Beginning with the next revision of the SARs, entanglement data will be presented in a tabular format identical to that used for the entanglement tables presented in the right whale and humpback whale assessments.

Comment 39: Regarding Cuvier's and mesoplodont beaked whales, it is inappropriate to provide a PBR for a stock based on the undifferentiated complex of beaked whales, and it is further noted that this is not a standard wildlife practice. Additionally, footnote 5 in Table 2 in the SAR (on fishing mortality) is unclear.

Response: The issue of using an undifferentiated beaked whale abundance estimate has been raised on several occasions. As noted in previous responses, at-sea identification of beaked whales is difficult, although the NEFSC is making progress on this. The utility of a pooled abundance estimate has been reviewed and supported by the Atlantic SRG. However, the SRG has recommended that NEFSC continue to collect and evaluate data (i.e., photographs, swimming profiles, coloration, etc.) that can be used during abundance surveys to identify beaked whale sightings.

Footnote 5 in Table 2 in the SAR clearly indicates how the data on the one 1995 unsampled pelagic drift gillnet vessel were used in the calculation of estimated mortality. The SEFSC data were taken at face value, and the point estimate was increased by 0.1 animals.

Comment 40: The N_{min} for western north Atlantic pilot whales published in the **Federal Register** (63 FR 39817, July 24, 1998) was different from the number cited in the draft SAR. The larger number in the **Federal Register** document should be used because of the size of the eastern Atlantic population and because of an article in the Wall Street Journal (October 13, 1998) stating a journalist's observation of vast pods of pilot whales. Further, Canadian abundance estimates should be incorporated into the SA, and Canadian assessments for transboundary stocks should be incorporated into the assessments.

Response: The N_{min} reported in the **Federal Register** document was incorrect; the correct estimate of N_{min} is 4,968, based on the 1995 survey estimate of the best population estimate (Nbest) of 8,176. The 1995 survey, which included Canadian waters, was designed to cover important habitats for several strategic stocks, including pilot whales. Although, known pilot whale habitat on Georges Bank was not completely surveyed in August 1995 due to Hurricane Felix, it is extremely unlikely that pilot whale densities in the non-surveyed area would significantly increase the estimate of Nbest. Although long-finned pilot whales occur in the western and eastern Atlantic Ocean, and perhaps in the Baltic Sea, stock boundaries are unknown. Combining eastern and western Atlantic abundance estimates (i.e., assuming one stock) would create an indefensible management unit, based on both biological and habitat considerations. Relative to reports of vast pods of pilot whales, these data cannot be quantified or examined in the context of protocols followed in a formally designed abundance survey. Excluding area-specific species surveys for several marine mammal stocks (harbor porpoise, beluga whales, grey seals, harp seals, and hooded seals), Canada has not conducted broad scale (i.e., Scotian Shelf) marine mammal abundance surveys. The only current data available for the Scotian Shelf was collected during the NEFSC 1995 summer surveys. Data from these surveys have been included in the SARs.

Comment 41: Regarding Atlantic short-finned pilot whales, a request was made to provide some measure of effort for bycatch by Spanish deep water trawlers observed off the Grand Banks, and to explain the basis for classifying four strandings from 1987 to August 1996 as likely caused by fishery interactions.

Response: The International Council for the Exploration of the Sea (ICES) paper by Lens (1997) was reviewed, and a measure of effort (kills/set) was derived and incorporated into the SAR. Similarly, effort data were incorporated into the pilot whale, common dolphin, striped dolphin, and white-sided dolphin assessments. The basis for classifying four of the stranded short-finned pilot whales as likely caused by fishery interactions will require a review of the SEFSC stranding records. Such a review has been requested. Comment 42: In the Atlantic Risso's dolphin SAR, the text and serious injury should be removed from the section Annual Human-caused Mortality because serious injuries were not included in the estimate of fishery mortality. Additionally, concern was expressed about an inconsistency in the longline mortality data (Table 2), a lack of 1996 pelagic longline data, a need for a definition for serious injury, and a clarification on how animals caught and released alive in the pelagic long line fishery were determined to be injured or uninjured.

Response: To avoid confusion, the text and ''serious injury'' have been deleted from the sentence in that section of the SAR. A similar modification was also made for long-finned and short-finned pilot whales. The inconsistency in Table 2 for the longline fishery has been corrected. There was one mortality observed in 1994. The SEFSC has recently revised the bycatch analysis of the 1992 through 1997 pelagic longline fishery. A draft manuscript has been circulated to the NMFS Science Centers and to the Office of Protected Resources for review, and it was also presented at the November 1998 SRG meeting. These new analyses will be presented in the next revision of the SARs. Furthermore, the SEFSC has recently developed a new group to conduct analysis of protected species bycatch from the pelagic longline and other fisheries. This will result in data being available in a more timely manner. A description of an animal's condition at the time of release was made by the observers. The observer's comments for each animal are contained in the Table 3 footnotes.

Comment 43: Clarification was requested on the SARs for long-finned and short-finned pilot whales regarding Table 2, footnote 8 (effort data are currently under review) and Table 3, footnote 2 (animal released alive with moderate injury).

Response: The superscript for footnote 8, Table 2 has been added into Table 2. It pertains to an evaluation of

effort for the Atlantic squid, mackerel, butterfish trawl fishery. The determination of animal condition was made by the observers. The observers make the determination based on a list of conditions contained on the biological sampling forms. It cannot be determined whether the condition code for ''moderate injury'' is synonymous with ''serious injury'' because the selected code is based on the observer's best judgement of an animal released from the gear.

Comment 44: A mortality estimate for common dolphin from the mid-Atlantic coastal sink gillnet fishery was not presented.

Response: Although bycatch of common dolphins has been observed in the mid-Atlantic coastal sink gillnet fishery, extrapolated mortality estimates were not presented because fishery effort is under review. This issue was reviewed at the November 1998 SRG meeting and will be addressed in the next revision of the SARs.

Comment 45: Text for Atlantic white-sided dolphins states that ''between 1990 and 1996 there were 35 mortalities observed in the New England multispecies sink gill net fishery,'' whereas Table 2 indicates 34 mortalities were observed.

Response: Both statements are correct. The explanation is in footnote 3 for Table 2, which states that one additional white-sided dolphin was observed taken in a pinger trip in 1994 (thus 35 mortalities), but the animals observed in pinger trips are added directly to the estimated total bycatch for that year because the observer coverage of pinger trips in 1994 was much higher than for other parts of the fishery during the same year. Thus, 34 white-sided dolphins were used in the estimation process, and 35 dolphins were observed taken.

Comment 46: Concern was expressed regarding the grouping of Atlantic spotted dolphins and Pantropical spotted dolphins into an undifferentiated group.

Response: As noted in previous responses, the grouping of the two spotted dolphins into an undifferentiated group for determining PBR and stock status has been reviewed and recommended by the SRG. Until the NEFSC and SEFSC can develop methods (particularly based on visual cues) it will be difficult to separate the two species at sea. During the 1998 surveys, the Centers collected photographic and biopsy data to help separate the sightings data. Also, fishery observers are instructed to collect tissue samples from bycaught animals.

Comment 47: Text pertaining to the 1991 mortality of striped dolphins in the North Atlantic Bottom Trawl Fishery should be maintained.

Response: Although the data were removed from Table 1, information on this interaction will remain in the section titled Fisheries Information.

Comment 48: Mortality data for bottlenose dolphins in the mid-Atlantic coastal sink gillnet data provided to the Atlantic SRG (May 1998), which appeared in an earlier draft SAR for offshore bottlenose dolphins, were not included in the draft 1998 SAR that was put out for public review. Further, because an updated SAR for the Atlantic coastal stock was not presented, the mortality data are unavailable for public review. Information on the number of stranded animals was also not presented.

Response: At the November 1998 SRG Meeting, NEFSC presented a revised analysis of the bottlenose dolphin bycatch in the mid-Atlantic coastal sink gillnet fishery. The NEFSC review raised several question regarding effort extrapolations, and stock origin of the observed bycatch. Based on the SRG review, the NEFSC will re-examine the procedures used to estimate annual mortality. These data will be presented in the next revision of the SARs. Although NMFS concurs that standings data should be included in the assessments, data on the total number of bottlenose strandings per year and information on possible fishery interactions are still under review. The northeast strandings data have not been completely computerized and verified. An unknown number of the stranded animals were taken to research facilities for further examination, therefore information on possible cause of the mortalities and species identification (coastal or offshore form) contained in the initial written stranding reports may be revised. Once the northeast reports are computerized, the data will be cross referenced with other data bases.

Comment 49: The default value for R_{max} is still used for the Gulf of Maine harbor porpoise when a new manuscript indicates that a different value may be appropriate.

Response: The value of R_{max} should be either the default value if no information is available or the best scientifically reviewed information. Because the new manuscript was not yet published when the final SAR was being prepared, the Atlantic SRG could not review this new information. Also, because the value proposed is over two times the default value and is partly based on survival data from such terrestrial species as elephants, it is critical the new information be carefully reviewed before going into the SAR. Thus, the steps are to review this new information at the spring 1999 Atlantic SRG meeting and then consider incorporating this new information into the next revision of the SAR.

Comment 50: A caveat should be included in the harbor porpoise Annual Human-caused Mortality section that clarifies that the mortality estimates are likely downwardly biased because data are absent for some mid-Atlantic fisheries.

Response: A statement was added to clarify that point.

Comment 51: The average annual mortality of harbor porpoises in the draft 1998 SAR differs from the mortality estimate in the Environmental Assessment (EA) dated June 15, 1998. The explanation for the difference is apparently that the averages are from different years and the EA includes Canadian takes. However, NMFS must include all sources of mortality for a trans-boundary stock in the SAR.

Response: The commenter is correct; the two mortality estimates are different for the exact stated reasons. At the most recent meeting of the Atlantic SRG, this issue was discussed, and it was recommended that Canadian takes be included in the required estimate of total human-caused mortality for the stock. This will be addressed in the next revision of the SARs.

Comment 52: In the harbor porpoise stock assessment, strandings should be added into each year in which they occurred as a minimum estimate of mortality. A separate chart showing strandings by year should be included in the SAR.

Response: A separate chart showing strandings by year could be included in the SAR however, the information in that table will probably be misinterpreted. The reason is that strandings of harbor porpoises take place during areas and times when fisheries are being observed to take harbor porpoises. This is especially true for 1995 and 1996, the years included in this SAR. Thus, there is a good chance that at least some (and possibly all) of the human-caused strandings are coming from the observed fishery and, so, have already been counted. Because of this, strandings should not be added to the mortality estimates for that year. However, for the next SAR that will include 1997 data, NMFS will investigate to ensure that takes were observed in times and areas in which strandings have been documented. If there are cases where gillnet-caused strandings are in areas and times when there is either no observer coverage or

no observed takes, these strandings will be added to the estimated mortality from the gillnet fishery. Strandings that appear to be caused by a fishery that has not been observed will be added to the other fishery-related mortality estimates. A table reporting these type of strandings will then be included in the SAR.

Comment 53: The statement in the SAR, under the Current Population Trend for harbor porpoises, that says it is not possible to determine a trend is incorrect. The reason is that, in October 1998, NMFS published a notice that cites a population viability analysis that projects a high probability of extinction within 100 years at the current rate of take. Thus, this clearly indicates a downward trend in the population.

Response: The information to be reported in the Current Population Trend section is on current (or recent past) observed trends. It is not meant for the reporting of potential future trends if the current level of bycatch continues. Additionally, the analysis mentioned was written after the draft SAR was finished. After the 1999 harbor porpoise abundance survey is completed, an analysis investigating trends from 1991 to 1999 will be conducted. The results of this trend analysis will then be reported in this section at a later date.

Comment 54: Discrepancies were noted in the Atlantic Harbor seal and gray seal SARs under the following sections: Current Population Trend; Potential Biological Removal; Status of Stock; and Optimum Sustainable Population (OSP).

Response: The text in the harbor seal PBR section was revised to ''The recovery factor for this stock is 1.0, the value for stocks with unknown population status, but known to be increasing.'' NMFS believes that recovery factor of 1.0 rather than 0.5 (default value) is justified based on current data on abundance and population growth rates. The reference to OSP, which is unknown, has been deleted. Similar modifications were made to the gray seal, harp, and hooded seal SARs.

Comment 55: Information on harbor seal mortality in aquaculture facilities and power plants and on strandings should be presented in tabular form and included with fishery-related mortality as minimum estimates of mortality.

Response: When the northeast strandings data are computerized and verified, they will be used to generate tabular summaries. If documented, non fishery-related sources of human-induced mortality will be added to the annual mortality estimates in future assessments.

Comment 56: The deleted text pertaining to hunting gray seals in Canadian waters should be left in the report. Also, strandings data for gray seals should be presented in tabular form.

Response: The text in question will be left in the 1998 SAR. Further, the NEFSC has contacted Canadian officials to obtain updated information on current rules and regulations regarding seal hunting.

Comment 57: Several estimates of harp seal abundance were included for 1990, but there was no explanation of the data. Also, it was not clear whether these estimates represented the best abundance estimates (N_{best}) or the minimum abundance estimates (N_{min}). Additionally, estimates of Canadian kill should be included.

Response: The text in the section Population Size was edited to explain the differences in the 1990 data. One estimate is for pups, and two independent estimates of total population were derived using pup counts and various assumptions on mortality. Details are in the referenced papers. The data presented in Table 1 are appropriate for Nmin. The assessment contains information on the Canadian commercial hunt.

Comment 58: Population estimates from Shelton *et al.* (1996) were not mentioned in the harp seal section titled Population Size.

Response: The population estimates by Shelton *et al.* (1996) have been incorporated into the text in the Population Size section.

Comment 59: A request was made for additional data on the cause of hooded seal strandings.

Response: Most of the stranded hooded seals are yearlings; annually, adults account for less than 10 of the total. Researchers at the New England Aquarium have been monitoring ice seal strandings for nearly a decade, but have not identified a singular cause for the strandings.

Comments on the Pacific Stock Assessment Reports

Comment 60: The FWS and NMFS should jointly publish SARs that have been considered by both agencies.

Response: Although both agencies see a clear advantage to this, the internal review systems in each agency are not synchronized, and, in the past, a joint publication would have significantly delayed the publication of the SARs from one agency. In the Pacific Region, joint publication on the Internet is being considered as an alternative to a joint printed publication.

Comment 61: Because the tables provided in Appendix 2 of the Pacific SARs do not present estimates of PBR for stocks that were not revised this year, one cannot compare PBR with estimated mortality.

Response: The established PBR for a stock changes only when the SARs are revised. The intent of the table is to show the information on which NMFS based its MMPA review of which stock assessments to revise. If putative (conditional on published revision) PBR values were presented in that table, the public would be likely to confuse these with the actual PBR from previously published reports.

Comment 62: The lack of abundance and mortality data for Hawaii is unacceptable, given that there are known fishery interactions with marine mammals.

Response: Estimates of marine mammal mortality and injury in the Hawaii-based long-line fishery will be available in the near future, but were not available for the 1998 revisions. Cetacean abundances from Acoustic Thermometry of Ocean Climate (ATOC)-sponsored aerial surveys are being estimated and are expected to be available for the 1999 revisions to the SARs for Hawaiian cetaceans. A large-scale ship survey of Hawaiian waters is being planned for 2001.

Comment 63: The recovery factor for minke whales should not have been changed from 0.40 to 0.45.

Response: The recovery factor was justifiably changed from 0.40 to 0.45 because the coefficient of variation of the mortality estimate improved from 0.91 to 0.67. This change was based on recommendations made in the original guidelines for preparing SARs and estimating PBR (Barlow *et al.*, 1995).

Comment 64: An estimate of harbor porpoise mortality in Canadian waters should be provided for the Inland Washington stock, as is done for the Gulf of Maine/Bay of Fundy stock, or an explanation of why it cannot be provided.

Response: Unlike in the Bay of Fundy, the Provincial government in British Columbia does not estimate the number of harbor porpoise incidentally taken in their waters; therefore, the assessment states that the number taken in southern British Columbia waters is not known. The abundance estimate for this stock also includes only U.S. waters.

Comment 65: It is inappropriate to lump multiple species into a single stock, as was done for Mesoplodont Beaked Whales.

Response: NMFS is aware that it is inappropriate to lump species together to obtain a pooled PBR; however, because field identification is usually impossible, this appears to be the only

practical alternative. This approach will achieve species-specific conservation objectives if gillnets are not selective and if they take species in proportion to their abundance. Evidence to date supports this assumption.

Comment 66: A new SAR should have been produced for Hawaiian Monk Seals.

Response: The MMPA requires that new information be reviewed every year for all strategic stocks, but it only requires a new report if such a review indicates that the status of the stock has changed or can be more accurately determined. The review by NMFS (in collaboration with the Pacific Scientific Review Group, PSRG) indicated that the new information available in 1997 did not warrant a revision at that time. A new SAR for monk seals was reviewed at the Fall 1998 meeting of the PSRG and will be available soon for public comment.

Comment 67: The effects of the recent El Nino should be included in the reports for the Oregon and Washington coast and inland Washington stocks of Harbor seal, and the San Miguel Island stock of northern fur seal.

Response: The 1998 SARs include data only through the first half of 1997; therefore, no attempt is made to assess the impact of the 1997–98 El Nino. This information will be included in future revisions.

Comment 68: Regarding the inland Washington stock of harbor seal, NMFS should re-establish an observer program for treaty gillnet boats.

Response: Takes from the Northern Washington marine set gillnet fishery (treaty) and most segments of the Washington Puget Sound salmon set/drift gillnet fishery (treaty and non-treaty) are included in Table 1 and used to calculate the mortality for the stock. Also included in the table are additional data for the Washington Puget Sound salmon set/drift gillnet fishery, from fisher self-reports. Since the observer data are considered more reliable than the fisher self-reported data, the observer data was used in the mortality calculation.

Dated: February 12, 1999.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020999A]

Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT); Spring Species Working Group Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Advisory Committee to the U.S. Section to ICCAT announces its spring meeting with its Species Working Groups on March 9 and 10, 1999.

DATES: The open sessions of the Committee meeting will be held on March 9, 1999, from 10 a.m. to 3 p.m., and on March 10, 1999, from 8:30 a.m. to 9:30 a.m., and from 11:30 a.m. to 5 p.m. Closed sessions will be held on March 9, 1999, from 1 p.m. to 6:30 p.m., and on March 10, 1999, from 9:30 a.m. to 11:30 a.m.

ADDRESSES: The meeting will be held at the Washington Hilton and Towers, 1919 Connecticut Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kim Blankenbeker at (301) 713–2276.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in open session to receive and to discuss information on (1) 1998 ICCAT meeting results and U.S. implementation of ICCAT decisions, (2) NMFS and ICCAT research and monitoring activities, (3) the Precautionary Approach, (4) the upcoming meeting of ICCAT's Working Group on Allocation Criteria, (5) Advisory Committee operational issues, (6) the U.S. requirement to identify countries that are diminishing the effectiveness of ICCAT, (7) the results of the Committee's Species Working Groups meetings, and (8) other matters relating to the international management of ICCAT species. The public will have access to the open sessions of the meeting, but there will be no opportunity for public comment.

Sessions of the Advisory Committee's Species Working Groups will not be open to the public, but the results of the working group discussions will be reported to the full Advisory Committee during the Committee's afternoon open session on March 10.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kim Blankenbeker at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: Feb 12, 1999.

Gary Matlock,

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

[FR Doc. 99–4136 Filed 2–18–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021299D]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a number of public meetings of its oversight committees and advisory panels in March, 1999 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between March 9 and March 26, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Meetings will be held in Peabody, MA, and Mansfield, MA. See

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, March 9, 1999, 9:30 a.m.—Joint meeting of the Habitat Oversight Committee and Advisors

Location: Holiday Inn, One Newbury Street (Rt. 1 North), Peabody, MA 01960, Phone: (978) 535–4600; Fax: (978) 535–8238.

The committee and advisors will discuss and review habitat-related

issues concerning access to the current Georges Bank groundfish closed areas for scallop fishing.

Monday, March 22, 1999, 9:30 a.m.—Groundfish Advisory Panel Meeting

Location: Holiday Inn, One Newbury Street (Rt. 1 North), Peabody, MA 01960, Phone: (978) 535–4600; Fax: (978) 535–8238.

The panel will review draft proposals and analysis for Framework Adjustment 29 to the Northeast Multispecies Fishery Management Plan (FMP), and advise the Groundfish Committee on a preferred alternative for consideration by the Council at its April 14–15 meeting. Framework Adjustment 29 would modify the FMP regulations pertaining to closed areas on Georges Bank and the Nantucket Lightship area to allow controlled access by scallop dredge vessels. The panel will also review and advise the committee on draft proposals for Framework Adjustment 30, for Council consideration at its April meeting, to reduce the fishing mortality rate on Georges Bank cod to below the management target level. The panel will also discuss and advise the committee on issues and measures to be included in a public hearing document for Amendment 13 to the FMP, including but not limited to: action to rebuild all stocks in the fishery management unit as needed under new overfishing definitions; managing fleet fishing capacity, including possible implementation of a two-tier permit system to address latent fishing permits; proposals for industry support systems involving scientific research and conservation engineering programs; modification of the annual adjustment schedule and possible change to the fishing year; and other issues that may be identified during the scoping process.

Tuesday, March 23, 1999, 9:30 a.m.—Groundfish Committee Meeting

Location: Holiday Inn, One Newbury Street (Rt. 1 North), Peabody, MA 01960, Phone: (978) 535–4600; Fax: (978) 535–8238.

Review of draft proposals and analysis for Framework Adjustment 29 to the Northeast Multispecies Fishery Management Plan (FMP), and recommendation of a preferred alternative for consideration by the Council at its April 14–15 meeting. Framework Adjustment 29 would allow controlled access by scallop dredge to closed areas on Georges Bank and the Nantucket Lightship area. The committee also will review and draft proposals and analysis for Framework Adjustment 30, and recommend a preferred alternative for Council consideration at its April meeting Framework Adjustment 30 will reduce the fishing mortality rate on Georges Bank cod to below the management target level. The committee will also discuss and take public comment on the scope of issues to be considered and possible measures to be included in a public hearing document for Amendment 13 to the FMP, including but not limited to: action to rebuild all stocks in the fishery management unit as needed under new overfishing definitions; managing fleet fishing capacity, including possible implementation of a two-tier permit system to address latent fishing permits; proposals for industry support systems involving scientific research and conservation engineering programs; modification of the annual adjustment schedule and possible change to the fishing year; and other issues that may be identified during the scoping process

Thursday, March 25, 1999, 9:30 a.m.—Whiting Advisory Panel Meeting

Location: Holiday Inn, Mansfield, MA 02048, Phone: (508) 339–2200; Fax: (508) 339–1040

Discussion of possible bycatch and/or discard issues associated with the measures in Amendment 12 (for whiting, offshore hake, and red hake) as well as possible framework action for any other unresolved issues that emerged during the development of Amendment 12; review and discussion of data and information needs in the context of the first Whiting Monitoring Committee meeting (October/November 2000) and the Year 4 default measure (May 1, 2002); discussion of the potential for industry-based gear research and information collection.

Friday, March 26, 1999, 9:30 a.m.—Whiting Committee Meeting

Location: Holiday Inn, Mansfield, MA 02048, Phone: (508) 339–2200; Fax: (508) 339–1040

Discussion of possible bycatch and/or discard issues associated with the measures in Amendment 12 (for whiting, offshore hake, and red hake) as well as possible framework action for any other unresolved issues that emerged during the development of Amendment 12; review and discussion of data and information needs in the context of the first Whiting Monitoring Committee meeting (October/November 2000) and the Year 4 default measure (May 1, 2002); discussion of the potential for industry-based gear research and information collection.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal discussion during these meetings. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: February 12, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–4138 Filed 2–18–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021299C]

Endangered Species; Permits

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

ACTION: Receipt of applications for scientific research permits (1199, 1200); Issuance of a scientific research permit (1180) and a modification to a scientific research permit (1162)

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received permit applications from: Guam Department of Agriculture (GDA) (1199) and Mr. David J. Stiers, Director of Springfield Science Museum (SSM) (1200); NMFS has issued a permit to Thomas R. Payne and Associates (TRPA) (1180); and NMFS has issued a modification to a scientific research permits to Salmon Protection and Watershed Network (SPAWN) (1162).

DATES: Written comments or requests for a public hearing on any of the new applications must be received on or before March 22, 1999.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 1162 and 1180: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066).

For permit 1199: Office of Protected Resources, Endangered Species

Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

For permit 1200: Protected Resources Division, F/SER3, 9721 Executive Center Dr., St. Petersburg, FL 33702–2432 (813–570–5312).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 1162 and 1180: Dan Logan, Protected Resources Division, (707–575–6066).

For permit 1199: Karen Salvini, Silver Spring, MD (301–713–1401).

For permit 1200: Terri Jordan, Silver Spring, MD (301–713–1401).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the ESA, is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Permits and modifications are issued in accordance with and are subject to parts 217–222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in this Notice

The following species and evolutionarily significant units (ESUs) are covered in this notice:

Green sea turtle (*Chelonia mydas*), Hawksbill sea turtle (*Eretmochelys imbricata*), Shortnose sturgeon (*Acipenser brevirostrum*).

Coho salmon (*Oncorhynchus kisutch*): Central California coast (CCC), Southern Oregon/northern California coast (SONCC).

Steelhead trout (*O. mykiss*): Southern California coast (SCC).

New Applications Received

GDA (1199) requests a 5-year permit to take green and hawksbill sea turtles, record biological data, take sample tissue and run DNA analysis according to NMFS sampling protocols. A few of the turtles will be satellite-tagged. The purpose of the research is to: 1) Collect baseline population size structure (age and sex) and genetic information for sea turtles in and about Guam, 2) survey Guam's beaches for sea turtle nesting activity for both species throughout the nesting period, and 3) establish a Guam based sea turtle working group of stakeholders in the management of sea turtles and ensure they have an active voice and opportunity to support recovery efforts.

SSM (1200) requests a 5-year permit to maintain up to five endangered shortnose sturgeon in captivity for educational purposes. The sturgeon will be captive sturgeon received from the Conte Anadromous Research Center that have been classified as ''non-releasable'' by NMFS.

Permits and Modifications Issued

Notice was published on November 17, 1998 (63 FR 63910) that NMFS issued Permit 1162 to SPAWN, authorizing takes of juvenile, threatened, CCC coho salmon associated with fish population studies on San Geronimo Creek and its tributaries. On January 19, 1998, SPAWN requested a modification to Permit 1162 to authorize fish rescue activities for adult CCC coho salmon. The rescue would occur at Roy's Dam on San Geronimo Creek, which is currently impassable by the salmon. Without intervention, adult CCC coho will be prevented from reaching available spawning habitat present upstream of the dam. As the health of these salmon was threatened and no reasonable alternative was available to the applicant, the 30-day public comment period was waived in accordance with 50 CFR 222.24(e). This modification was issued on February 11, 1999, and is valid for the duration of the permit which expires on June 30, 2003.

Notice was published on October 21, 1998 (63 FR 56148), that an application had been filed by TRPA for a scientific research permit. Permit 1180 was issued to TRPA on February 11, 1999, and authorizes takes of adult and juvenile, threatened CCC and SONCC coho salmon, and adult and juvenile, endangered SCC steelhead associated with fish population and habitat studies throughout these ESUs in California. ESA-listed fish may be observed or captured, anesthetized, handled, allowed to recover from the anesthetic, and released. Indirect mortalities are also authorized. Permit 1180 expires on June 30, 2004.

Dated: February 12, 1999.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–4139 Filed 2–18–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

February 11, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: February 18, 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 current limits for certain categories are being increased for carryover and recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 63297, published on November 12, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 11, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 5, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month

period which began on January 1, 1999 and extends through December 31, 1999.

Effective on February 18, 1999, you are directed to increase the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
340/640	1,086,991 dozen.
347/348/647/648	2,344,183 dozen of which not more than 1,238,434 dozen shall be in Categories 647/648.
442	83,231 dozen.
444	83,231 numbers.
448	42,877 dozen.
633	152,415 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The guaranteed access levels for the foregoing categories remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–4051 Filed 2–18–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Security Policy Advisory Board

ACTION: Notice.

SUMMARY: The President's Security Policy Advisory Board has been established pursuant to Presidential Decision Directive/NSC–29, which was signed by President on September 16, 1994.

The Board will advise the President on proposed legislative initiatives and executive orders pertaining to U.S. security policy, procedures and practices as developed by the U.S. Security Policy Board, and will function as a federal advisory committee in accordance with the provisions of Pub. L. 92–463, the ''Federal Advisory Committee Act.''

The President has appointed from the private sector, three of five Board members each with a prominent background and expertise related to security policy matters. General Larry Welch, USAF (Ret.) will chair the Board. Other members include: Rear Admiral Thomas Brooks, USN (Ret.) and Ms. Nina Stewart.

The next meeting of the Board will be held on 8 March 1999 at the Boeing Company, Flight and Training Center, Bldg 25–01, 1301 S.W., 16th Street, Tukwila, WA 98055. The meeting will be open to the public.

For further information please contact Mr. Bill Isaacs telephone: 703–602–0815.

Dated: February 12, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–4050 Filed 2–18–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Strategic Command Strategic Advisory Group

AGENCY: Department of Defense, USSTRATCOM.

ACTION: Notice.

SUMMARY: The Strategic Advisory Group (SAG) will meet in closed session on May 6 and 7, 1999. The mission of the SAG is to provide timely advice on scientific, technical, and policy-related issues to the Commander in Chief, U.S. Strategic Command, during the development of the nation's strategic war plans. At this meeting, the SAG will discuss strategic issues that relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12958, April 17, 1995. Access to this information must be strictly limited to personnel having requisite security clearances an specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, (5 U.S.C. App 2), it has been determined that this SAG meeting concerns matter listed in 5 USC 522b(c) and that, accordingly, this meeting will be closed to the public.

Dated: February 12, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officern DoD.

[FR Doc. 99–4049 Filed 2–18–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board (AFEB)

AGENCY: Office of The Surgeon General, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, this announces the forthcoming AFEB meeting. This Board will meet from 0730–1630 on Tuesday, 13 April, and 0730–1630 on Wednesday, 14 April. The purpose of the meeting is to address pending and new Board issues, provide briefings for Board members on topics related to ongoing and new Board issues, conduct subcommittee meetings, and to conduct an executive working session.

The meeting location will be at the Club Coronado & Island Club, San Diego, California. The meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: COL Benedict Diniega, AFEB Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, Virginia 22041–3258, (703) 681–8012/4.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–4193 Filed 2–18–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Committee

AGENCY: U.S. Army War College.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a) (2) of the Federal Advisory Committee Act (5 U.S.C. App. I), announcement is made of the following Committee meeting:

NAME OF COMMITTEE: U.S. Army War College Subcommittee of the Army Education Advisory Committee.

DATES OF MEETING: April 11, 12, and 13, 1999.

PLACE: Root Hall, U.S. Army War College, Carlisle Barracks, Pennsylvania.

TIME: 8:30 a.m.–5:00 p.m.

PROPOSED AGENDA: Receive information briefings; conduct discussions with the Commandant, staff and faculty; review results of the Process for Accreditation of Joint Education (PAJE98) and the USAWC Master's Degree Campaign Plan; plan future membership and composition of the Board of Visitors; and provide guidance regarding regional accreditation and areas for improvement in education policy.

FOR FURTHER INFORMATION CONTACT: To request advance approval or obtain further information, contact Colonel Thomas D. Scott, Box 524, U.S. Army War College, Carlisle Barracks, PA 17013 or telephone (717) 245–3907.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Any interested person may attend, appear before, or file statement with the Committee after receiving advance approval for participation. To request advance approval or obtain further information, contact Colonel Thomas D. Scott at the above address or phone number.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–4191 Filed 2–18–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of Draft Decision Document and Supplemental Environmental Impact Statement (SEIS) for the Plot and Green Ridge Local Flood Protection Projects Within the City of Scranton, Lackawanna County, Pennsylvania

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers, Baltimore District, is initiating a 45-day public review and comment period of the draft SEIS for the Plot and Green Ridge Flood Protection Project. The SEIS was prepared to (1) supplemental the previously completed Final Environmental Impact Statement prepared for the Scranton, Pennsylvania, Flood Protection Feasibility Study in January 1992; (2) to identify potential environmental impacts associated with the various project alternatives; and (3) to document compliance with NEPA requirements. Specifically, the SEIS identifies existing conditions, identifies, any changed environmental conditions, re-examines previously collected data in light of new or updated methodologies, collects a new environmental data, and evaluates the feasibility of both new and previously considered potential project actions.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the draft SEIS can be addressed to Ms. Maria de la Torre, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–P, P.O. Box 1715, Baltimore, Maryland 21203–1715, telephone (410) 962–2911 or 1–800–295–1610. E-mail address: maria.e.delatorre@usace.army.mil.

SUPPLEMENTARY INFORMATION:

1. A study of the Lackawanna River was originally authorized October 1, 1986, by resolution of the House of Representatives Committee on Public Works and Transportation (House Document 702). An Environmental Impact Statement (EIS) was prepared by the Corps of Engineers and was completed in January 1992. This EIS evaluate the feasibility of proposed alternative solutions for providing flood protection along the Lackawanna River in Scranton, Pennsylvania. At that time, the 1992 EIS recommended structural flood protection for only the right bank, Albright Avenue area in Scranton, and not for the Plot and Green Ridge areas within Scranton. In 1996 the U.S. Army Corps of Engineers was directed under the 1996 Water Resources Development Act (WRDA) to conduct a reevaluation of flood protection for the Plot and Green Ridge areas. Therefore, the Corps of Engineers, Baltimore District, is now conducting a reevaluation and preparing a Decision Document and a Supplemental Environmental Impact Statement (SEIS) for the Plot and Green Ridge Flood Protection project.

2. In accordance with the National Environmental Policy Act (NEPA), the Corps of Engineers, Baltimore District, is initiating a 45-day public review and comment period for the combined Decision Document and SEIS for the proposed flood protection project for the Plot and Green Ridge areas, located in the City of Scranton, Pennsylvania. The purpose of the project is to provide 100-year flood protection to the communities, consistent with the 100-year flood protection previously approved for the adjacent Park Place (Alright Avenue) community. In the Plot community, the proposed levee will be 5,690 linear feet with 210 linear feet of this being a combination levee and floodwall. In the Green Ridge community, the levee will be 7,830 linear feet with 535 linear feet of this being a combination of levee and floodwall. Other project components for each area include closure structures, interior drainage structures, realignment of utilities, minor realignment of roads, and acquisition of real estate.

3. The project is to be constructed under the authority of Section 101 of the Water Resources Development Act (ERDA) of 1992, Section 342 of WRDA 1996, and the Energy and Water Development Appropriations Acts of 1998 and 1999. The City of Scranton is the non-Federal sponsor of the project. The proposed project has an estimated cost of $14,672,000 for the Plot area and $19,853,000 for the Green Ridge area. A project cost-sharing agreement for the Albright Avenue project was signed in May 1998. For the current reevaluation, the Corps of Engineers' portion is estimated to be $6,858,400 for Plot and $11,364,350 for Green Ridge, and the City of Scranton's portion is estimated to be $7,813,600 for Plot and $8,488,650 for Green Ridge.

4. The Baltimore District has prepared a SEIS, which evaluates the potential impacts associated with the proposed project. Potential impacts were assessed with regard to the physical, chemical, and biological characteristics of the aquatic and terrestrial ecosystem, endangered and threatened species, hazardous, toxic and radioactive substances, aesthetics and recreation, cultural resources, and the general needs and welfare of the public. The proposed action is in full compliance with NEPA regulation 40 CFR 1500–1508, Corps of Engineers Regulation 200–2–2, the Endangered Species Act, the Clean Water Act, and all other applicable laws and regulations.

5. Any person who has an interest in the project is welcome to provide comments within 45 days of the date of publication of this notice to the address in the following paragraph. Written comments should be submitted by Monday, April 5, 1999. Comments must clearly set forth the interest that may be affected by this proposed action and the manner in which the interest may be affected.

6. Individuals who want to review the combined Draft Decision Document and SEIS may examine a copy at the Scranton Main Public Library, located on Vine Street at N. Washington Avenue, Scranton, Pennsylvania, and are welcome to provide input. The document has also been distributed to Federal, state, and local regulatory agencies, known interested organizations, and the Plot and Green Ridge community associations. Individuals may obtain a copy of the

document by writing to the U.S. Army Corps of Engineers, Baltimore District, ATTN: CENAB–PL–P (Ms. Maria de la Torre), P.O. Box 1715, Baltimore, MD 21203–1715, or by telephone at (410) 962–2911 or 1–800–295–1610. Written comments or inquiries may also be sent by fax to Ms. de la Torre at (410) 962–4698 or by electronic mail to cenab–pl–p@usace.army.mil. The combined Decision Document and SEIS is also available on the Baltimore District's Internet website as an Adobe Acrobat file at www.nab.usace.army.mil/pbriefs/scranton/seis299.

7. A Public Meeting for the Plot community is scheduled for Wednesday, March 10, 1999, at 7 p.m., at St. Joseph's Lithuanian Church (corner of Main Avenue and Theodore Street), Scranton, Pennsylvania. A Public Meeting for the Green Ridge community is scheduled for Thursday, March 11, 1999, at 7 p.m., also at St. Joseph's Lithuanian Church. The purpose of the meeting will be to discuss the status of the reevaluation and related issues, and to address any comments, questions, and suggestions from the public.

Robert F. Gore,

Acting Chief, Planning Division.

[FR Doc. 99–3986 Filed 2–18–99; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Cancellation of the Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Dade County Beach Erosion Control and Hurricane Protection Project, for a Test Beach Fill Using a Foreign Source of Carbonate Sand

AGENCY: Jacksonville District, U.S. Army Corps of Engineers, Department of Defense.

ACTION: Cancellation notice.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers hereby cancels its Notice of Intent to prepare a Draft Environmental Impact Statement as published in FR, Vol. 63, No. 162, page 44850, August 21, 1998 and Vol. 63, No. 207, page 57282, October 27, 1998.

The Notice is cancelled because Congress, in the Conference Report for FY 1999 appropriations, stated that none of the funds added by Congress (in FY 1999) for the Dade County, Beach Erosion Control and Hurricane Protection Project shall be used for the acquisition of foreign source materials for the project unless the Secretary of the Army provides written certification to the committees on Appropriations that domestic sources of material are not available.

FOR FURTHER INFORMATION CONTACT: Questions can be forwarded to Mr. Kenneth Dugger, Environmental Branch, Planning Division, Jacksonville District, Corps of Engineers, Post Office Box 4970, Jacksonville, Florida 32232–0019, Phone: 904–232–1686.

SUPPLEMENTARY INFORMATION: None.

Dated: February 8, 1999.

James C. Duck,

Chief, Planning Division.

[FR Doc. 99–4192 Filed 2–18–99; 8:45 am]

BILLING CODE 3710–AJ–M

DELAWARE RIVER BASIN COMMISSION

Notice of Determination Regarding the Assimilative Capacity of the Tidal Delaware River for Toxic Pollutants; Public Hearings

AGENCY: Delaware River Basin Commission.

ACTION: Notice of Commission determination and public hearings.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold public hearings to receive comments on a determination that the assimilative capacity of the tidal Delaware River is being exceeded for certain toxic pollutants. This determination will authorize the Executive Director to establish wasteload allocations for specific point source discharges of these pollutants.

DATES: The public hearings are scheduled as follows:

May 3, 1999 beginning at 1:30 p.m. and continuing until 5:00 p.m., as long as there are people present wishing to testify.

May 5, 1999 beginning at 1:30 p.m. and continuing until 5:00 p.m. as long as there are people present wishing to testify; and resuming at 6:30 p.m. and continuing until 9:00 p.m., as long as there are people present wishing to testify.

May 11, 1999 beginning at 1:30 p.m. and continuing until 5:00 p.m., as long as there are people present wishing to testify.

ADDRESSES: The May 3, 1999 hearing will be held in the Second Floor Auditorium of the Carvel State Building, 820 North French Street, Wilmington, Delaware.

The May 5, 1999 hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

The May 11, 1999 hearing will be held in the Jefferson Room of the Holiday Inn at 400 Arch Street, Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628. Telephone (609) 883–9500 ext. 203.

SUPPLEMENTARY INFORMATION:

Background and Rationale

On October 23, 1996 the Delaware River Basin Commission amended its Comprehensive Plan, Water Code and Water Quality Regulations concerning water quality criteria for toxic pollutants, and policies and procedures to establish wasteload allocations and effluent limitations for point source discharges to the tidal Delaware River.

Specifically, water quality criteria for selected toxic pollutants were incorporated in the Comprehensive Plan and Article 3 of the Water Code and Water Quality Regulations as stream quality objectives. Article 4 of the Water Quality Regulations was amended to include policies and procedures to be used to establish wasteload allocations for those discharges containing pollutants which exceed the stream quality objectives and impact the designated uses of the river following a Commission determination that the assimilative capacity of a zone of the Delaware River is exceeded. These amendments provided a mechanism for identifying toxic pollutants which impair aquatic life and human health, and developing uniform and equitable wasteload allocations for those NPDES discharges to the tidal Delaware River which contribute to their impairment. The permitting authorities of the Basin states will utilize allocations developed by the Commission to establish effluent limitations for NPDES permittees in their jurisdiction, as appropriate.

The subject of the hearings is a proposed determination by the Commission that the assimilative capacity of the tidal Delaware River (Trenton, NJ to the head of Delaware Bay) is being exceeded for 1,2-dichloroethane, tetrachloroethene, chronic toxicity and acute toxicity. These parameters were selected based upon their mass loading to the estuary, minimal interaction with estuary sediments, and the availability of calibrated and validated water quality models that could be used to develop the wasteload allocations. This determination will authorize the

Executive Director to establish wasteload allocations for continuous point source discharges pursuant to Sections 4.30.7A.1. and 4.30.7B.2.c. of the Commission's Water Quality Regulations.

Seventy-six continuous point source discharges were considered in each of the wasteload allocation exercises, although the number included in any allocation varied from 10 to 55. The procedure used to develop the wasteload allocations is called Equal Marginal Percent Reduction or EMPR. EMPR is a two step process in which a discharge is first considered independently of all other discharges to the estuary. In this step called the Baseline Analysis, each discharge must meet stream quality objectives in and of itself. In the second step called Multiple Discharge Analysis, the cumulative impact of all discharges, discharging at the baseline loading established during step one, is evaluated against the stream quality objectives. If the analysis indicates that an objective is exceeded, then the baseline loads of all discharges significantly contributing to the violation are reduced by an equal percentage until the stream quality objective is met.

For 1,2-dichloroethane, 11 of 51 discharges were adjusted from their initial loading in order to meet the stream quality objectives. For tetrachloroethene, seven of 40 discharges were adjusted in order to meet the stream quality objectives. For chronic toxicity, ten of the 55 discharges were adjusted during the baseline analysis portion of the wasteload allocation. The multiple discharge analysis portion of the procedure will not be implemented for chronic toxicity so that additional data on the relationship between the concentration of specific chemicals and toxicity of both wastewater and ambient samples can be obtained. This portion will be deferred until Phase 2 of the Total Maximum Daily Load (TMDL) is completed.

For acute toxicity, eight of the ten discharges evaluated were reduced from their initial wasteload allocation concentration during the baseline analysis portion of the allocation. As with chronic toxicity, the multiple discharge analysis which will determine the total surface area of the estuary assigned to mixing areas will be deferred until Phase 2 of the TMDL is completed.

In accordance with Section 4.30.7B.2.c.5). of the Commission's Water Quality Regulations, a document entitled Wasteload Allocations for Volatile Organics and Toxicity: Phase 1 TMDLs for Toxic Pollutants in the Delaware River Estuary has been prepared which describes the process used to develop wasteload allocations for continuous point source discharges as part of Phase 1 of a Total Maximum Daily Load for selected toxic pollutants for the tidal Delaware River. This document is available on the Commission's web site at www.state.nj.us/drbc, or by contacting Christopher Roberts, Public Information Officer, at (609) 883–9500 ext. 205.

The following supporting documents describing the mathematical models used in the process are also available from the Commission:

Calibration and Validation of a Water Quality Model for Volatile Organics and Chronic Toxicity in the Delaware River Estuary.

Calibration and Validation of the DYNHYD5 Hydrodynamic Model for the Delaware River Estuary.

Development of a Tidal Version of the CORMIX Models for Application to Discharges in the Delaware Estuary.

Copies of these documents may be obtained by contacting Christopher Roberts, Public Information Officer at (609) 883–9500, extension 205.

Persons wishing to testify are requested to notify the Secretary in advance. Written comments on the proposed determination should also be submitted to the Secretary.

Delaware River Basin Compact, 75 Stat. 688.

Dated: February 9, 1999.

Susan M. Weisman,

Secretary.

[FR Doc. 99–4150 Filed 2–18–99; 8:45 am]

BILLING CODE 6369–01–P

DEPARTMENT OF EDUCATION

The International Research and Studies Program

AGENCY: Department of Education.

ACTION: Publication of the 1998 annual report.

SUMMARY: Section 605 of the Higher Education Act of 1965, as amended (HEA), authorizes the Secretary of Education to provide assistance to conduct research, studies, and surveys and develop specialized instructional materials that further the purposes of Part A of Title VI of the HEA.

The activities conducted under section 605 of the HEA correspond in large part to the foreign language and area studies research activities previously supported under section 602 of Title VI of the National Defense Education Act.

Purpose

Under the International Research and Studies Program, the Secretary of Education awards grants and contracts for—

(a) Studies and surveys to determine the needs for increased or improved instruction in foreign language, area studies, or other international fields, including the demand for foreign language, area, and other international specialists in government, education, and the private sector;

(b) Studies and surveys to assess the utilization of graduates of programs supported under this title by governmental, educational, and private sector organizations and other studies assessing the outcomes and effectiveness of programs so supported;

(c) Evaluation of the extent to which programs assisted under Title VI that address national needs would not otherwise be offered;

(d) Comparative studies of the effectiveness of strategies to provide international capabilities at institutions of higher education;

(e) Research on more effective methods of providing instruction and achieving competency in foreign languages, area studies, or other international fields;

(f) The development and publication of specialized materials for use in foreign language, area studies, and other international fields, or for training foreign language, area, and other international specialists;

(g) Studies and surveys of the uses of technology in foreign language, area studies, and international studies programs;

(h) Studies and evaluations of effective practices in the dissemination of international information, materials, research, teaching strategies, and testing techniques throughout the education community, including elementary and secondary schools; and

(i) The application of performance tests and standards across all areas of foreign language instruction and classroom use.

1998 Program Activities

In fiscal year 1998, 9 new grants ($958,266) and 22 continuation grants ($1,931,090) were awarded under the International Research and Studies Program. These grants are active currently and will be monitored through progress reports submitted by grantees. Grantees have 90 days after the expiration of the grant to submit the products resulting from their research to the Department of Education for review and acceptance.

Completed Research

A number of completed research projects resulting from grants made during prior fiscal years have been received during the past year. These are listed below.

Title	Author/location
Gulf Arabic-English Dictionary	University of Arizona, Department of Near Eastern Studies, Tucson, AZ 85721, Hamdi A. Qafisheh.
A Textbook of Spoken Albanian	University of California, Center for Research in Language Acquisition 9500 Gilman Drive—UCSD, La Jolla, CA 92093–0526, Leonard Newmark.
Subarashii: Automatic Speech Recognition for Computer-based Exercises in the Japanese Language for Beginning High School Students.	Entropic Research Laboratory, 1040 Noel Drive, Menlo Park, CA 94025, Jared Bernstein, Farzad Ehsani.
A Reference Grammar of Pashto	Center for Applied Linguistics, 4646 40th Street, NW, Washington, DC 20016–1859, Barbara Robson, Habibullah Tegey.
Improved Beginners' Instructional Materials for Akan	University of Florida, Center for African Studies, 427 Grinter Hall, Gainesville, FL 32611, Paul A. Kotey.
The ABC Alphabetically-based Computerized Chinese-English Dictionary Project.	University of Hawaii, Spalding Room, 2540 Maile Way, Honolulu, HI 96822, Cynthia Ning.
Teaching Materials for Russian Language Instruction at the Secondary School Level.	Friends School, Center for Russian, Language and Culture, 5114 North Charles Street, Baltimore, MD 21210, Zita D. Dabars.
An Electronic Network for Secondary-level Teachers of Japanese	Massachusetts Institute of Technology, Foreign Languages and Literatures, Room 14N–305, Cambridge, MA 02139, Shigeru Miyagawa.
A Comprehensive Tibetan-English Dictionary of Modern Tibetan	Case Western Reserve University, Department of Anthropology, 11220 Bellflower, Cleveland, OH 44106–7125, Melvyn C. Goldstein.
Malayalam Textbook: Hard Copy Braille Materials for Languages Using non-Roman Script.	University of Texas, Department of Oriental Languages, 2601 University Avenue, Austin, TX 78712, Rodney F. Moag.

To obtain a copy of a completed study, contact the author at the given address.

FURTHER INFORMATION: For a copy of the 1998 annual report and further information regarding the International Research and Studies Program, write to Jose L. Martinez, Program Officer, International Education and Graduate Programs Service, United States Department of Education, 400 Maryland Avenue, S.W., Washington, DC 20202–5247. Telephone number: (202) 401–9784.

Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain a copy of this notice or the 1998 annual report referred to in this notice in an alternative format (e.g. Braille, large print, audiotape, or computer diskette) by contacting the Department as listed above.

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 of portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

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 at (202) 512-1530 or, toll free, at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Dated: February 12, 1999.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–4031 Filed 2–18–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: March 4–6, 1999.

TIME: March 4—Achievement Levels Committee, 1:30–2:30 p.m., (closed), 2:30–4:00 p.m., (open); Subject Area Committee #1, 2:00–3:00 p.m., (closed); 3:00 p.m.–4:00, (open); and Executive Committee, 4:00–5:30 p.m., (open), 5:30–6:00 p.m., (closed).

March 5—Full Board, 8:30–10:00 a.m., (open); Subject Area Committee #1, 10:00 a.m.–12:00 p.m., (open); Reporting and Dissemination Committee, 10:00 a.m.–12:00 p.m., (open); Achievement Levels Committee, 10:00–12:00 (open); Full Board, 12:00–4:15 p.m., (open). March 6—Nominations Committee, 8:00–9:00 a.m., (open); Full Board, 9:00–11:30 a.m., (open); adjournment, 11:30 a.m.

LOCATION: Madison Hotel, 15th and M Streets, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving America's Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under Pub. L. 105–78, the National Assessment Governing Board is also granted exclusive authority over developing the Voluntary National Tests pursuant to contract number RJ97153001.

On March 4, the Achievement Levels Committee will meet in partially closed session. From 1:30–2:30 p.m., the meeting will be closed to permit the Committee to review the results of the civics and writing standards setting activities for the National Assessment examinations. This portion of the meeting must be closed because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption (9)(B) of Section 552b(c) of Title 5 U.S.C. In open session, 2:30 to 4:00 p.m., the Committee will review other civics and writing information from the national assessment, and discuss the draft report to Congress regarding the quality of the achievement levels setting process.

Subject Area Committee #1 will hold in a partially closed meeting. From 2:00–3:00 p.m. the meeting will be closed to permit the Committee to review reading passages that have been developed for inclusion in the Voluntary National Test in 4th grade reading. This portion of the meeting must be closed because references will be made to specific items from the assessment and premature disclosure of the information presented for review would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C. In open session, 2:00–4:00 p.m. Subject Area Committee #1 will discuss the IEA civic Education Study, the new NAEP Foreign Language assessment development, and activities related to the Voluntary National Test in 4th grade reading.

Also on March 4, the Executive Committee will meet in partially closed session. The open portion of the meeting will be from 4:00–6:00 p.m. at which time the Committee will receive updates on Voluntary National Tests, NAEP reauthorization, and NAEP design for 2000–2010. From 5:30–6:00 p.m., the Committee will meet in closed session to discuss the development of cost estimates for the NAEP contract. This portion of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program. The discussion of this information would be likely to significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of Section 552b(c) of Title 5 U.S.C.

On March 5, the full Board will convene in open session from 8:30–10:00 a.m. In addition to a report from the Executive Director of the National Assessment Governing Board, and an update on NAEP activities, the agenda for this session of the meeting includes a report and discussion on Voluntary National Tests: purposes, definitions, and reporting plans.

Beginning at 10:00 a.m. there will be open meetings of the standing committees.

Subject Area Committee #1 will meet from 10:00 a.m.–12:00 p.m. to discuss NAEP math development activities, national trends in math standards and assessments, the Achieve math project, and activities related to the Voluntary National Test in 8th grade mathematics.

The Design and Methodology Committee will meet from 10:00 a.m.–12:00 p.m. to take action on a change in the proposed sampling for NAEP 2000. The agenda also includes the following action items for the Voluntary National Tests (VNT): (1) Accommodations for limited English proficient students, and (2) the revisions in the research plan for year 2 of the (VNT).

Also, the Reporting and Dissemination Committee will meet from 10:00 a.m.–12:00 p.m. The Committee will be reviewing the following documents: (1) NAGB policy on reporting and dissemination of National Assessment results, (2) NAEP 1998 Reading Report release, and (3) schedule for release for future NAEP reports. Other agenda items to be considered by the Reporting and Dissemination Committee are related to the reporting of specific data: private school results; categories for race; and students with disabilities and limited English proficiency.

The Full Board will reconvene in open session from 12:00–4:15 p.m. The Board will hear a briefing on the NAEP 1998 Reading Report, and NAEP Internet Item Release. The Board will discuss the National Assessment Design: 2000–2010, and the NAEP report to Congress on achievement levels. Also, the Board will hear a briefing on the recommendations for NAEP 2000, and receive a follow-up report on the NAGB tenth anniversary conference.

On March 6, from 8:00–9:00 a.m., there will be an open meeting of the Nominations Committee. The Committee will consider the nominations process and schedule for 1999.

Beginning at 9:00 a.m., until adjournment, approximately 11:30 a.m., the full Board will reconvene to discuss NAGB: its cultures, and traditions and to receive reports from its various standing committees.

Summaries of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW, Washington, DC, from 8:30 a.m. to 5:00 p.m.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 99–4086 Filed 2–18–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Site-Wide Environmental Impact Statement for Continued Operation of the Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Final Site-Wide Environmental Impact Statement (SWEIS) for Continued Operation of the Los Alamos National Laboratory (LANL)(DOE/EIS–0238). The LANL SWEIS evaluates the potential environmental impacts of continuing to operate LANL and incorporates public comments received on the Draft SWEIS. DOE's Preferred Alternative for LANL, as identified in the Final SWEIS, is the Expanded Operations Alternative, with plutonium pit production at a level of 20 pits a year in the near term (versus 50–80 pits per year as identified in the Expanded Alternative in the Draft SWEIS). The Final SWEIS also evaluates a No Action Alternative, a Reduced Operations Alternative, and a ''Greener'' Alternative.

ADDRESSES: Written requests for copies of the Final SWEIS or requests for information should be directed to: Mr. Corey Cruz, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico, 87185–5400 or by calling (505) 845–4282.

FOR FURTHER INFORMATION CONTACT: DOE has prepared this SWEIS pursuant to the National Environmental Policy Act (NEPA). For information on DOE's NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC, 20585, 202–586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: LANL, located in north-central New Mexico, is one of DOE's National Laboratories undertaking a variety of research, development, and applications work in support of DOE missions. The SWEIS analyzes four alternatives for the continued operation of LANL. The No Action Alternative would continue operation of LANL in accordance with existing plans. This alternative provides a baseline against which the impacts of the other alternatives can be compared. The Reduced Operations Alternative would reduce facility operations currently ongoing or planned to the minimum levels necessary to maintain the near term capability to perform work assigned to LANL. The Expanded Operations Alternative would expand operations at LANL, as the need arises, to the highest reasonably foreseeable levels appropriate to implement mission elements assigned to LANL. The ''Greener'' Alternative would utilize the capabilities and competencies at LANL with an emphasis on basic science, waste minimization and treatment, dismantlement, non-proliferation, and other areas of national and international importance. Weapons applications of LANL capabilities would be at the Reduced Operations levels. DOE developed this alternative after soliciting input from members of the public in the communities surrounding LANL.

All four alternatives describe the impacts of manufacturing plutonium triggers (known as ''pits'') for the United States nuclear weapon stockpile. The alternatives analyzed a range of production rates, including a maximum of 50 pits per year, single shift, 80 pits per year multiple shifts, in the Expanded Operations Alternative. The Expanded Operations Alternative also analyzed the expansion of the low-level nuclear waste disposal site located in Technical Area-54 at LANL.

In the Draft SWEIS, the DOE's Preferred Alternative was the Expanded Operations Alternative. In the Final SWEIS, the Expanded Operations Alternative remains the Preferred Alternative except that pit manufacturing would be implemented at a level of 20 pits per year in the near term (before 2007). DOE has determined that additional study of methods for implementing the 50 to 80 pits per year production capacity is warranted.

The Final SWEIS incorporates comments received during the public comment period from May 15, 1998 through July 15, 1998. The SWEIS is available for public inspection at the following locations:

University of New Mexico, Government Document Collection, Zimmerman Library, Main Campus, Albuquerque, New Mexico 87131–1466, (505) 277–5441

U.S. Department of Energy, Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, 202–586–6020

Los Alamos National Laboratory, Community Relations Office, 1619 Central Avenue, Los Alamos, New Mexico 87544, (505) 665–4400, toll free 1–800–508–4400

Subsequent Document Preparation: DOE intends to issue a Record of Decision no earlier than 30 days following publication in the **Federal Register** of the Environmental Protection Agency's Notice of Availability of the Final SWEIS. DOE will publish the Record of Decision in the **Federal Register**.

Issued in Washington, DC, on February 11, 1999.

John C. Ordaz,

Program Manager LANL SWEIS, Defense Programs.

[FR Doc. 99–4135 Filed 2–18–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, March 4, 1999, 6:00 p.m.–9:30 p.m.

ADDRESSES: College Hill Library (Front Range Community College), 3705 West 112th Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. The Board will conduct its final discussion and finalize recommendation(s) on building rubble.
2. The Board will review and discuss issues regarding low-level waste disposition.
3. The Board will review responses to comments, questions, and concerns about the East Trenches and Solar Ponds Plume Proposed Action Memorandum Documents.
4. Other Board business will be conducted as necessary.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved prior to publication.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue,

SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 am and 4:00 pm on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on February 16, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–4134 Filed 2–18–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY (DOE)

Nuclear Energy Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting

SUMMARY: This notice announces a meeting of the Nuclear Energy Research Advisory Committee. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), requires that public notice of the meetings be announced in the **Federal Register**.

DATES: Tuesday, March 30, 1999, 10:30 a.m. to 5:45 p.m.; and Wednesday, March 31, 1999, 8:30 a.m. to 12:30 p.m.

ADDRESSES: Crystal Gateway Marriot, 1700 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Norton Haberman, Designated Federal Officer, Nuclear Energy Research Advisory Committee, U.S. Department of Energy, NE–1, 1000 Independence Avenue, S.W., Washington DC 20585, Telephone Number 202–586–0126, E-mail: Norton.Haberman@hq.doe.gov.

SUPPLEMENTARY INFORMATION: Purpose of the Meeting: To provide advice to the Director of the Office of Nuclear Energy, Science and Technology (NE) of the Department of Energy on the many complex planning, scientific and technical issues that arise in the development and implementation of the Nuclear Energy research program.

Tentative Agenda

Tuesday, March 30, 1999

Welcome remarks
Office of Nuclear Energy, Science and Technology budget for FY 2000
Status of Nuclear Energy Research Initiative
Office of Science's programs that have relevance to NE's programs
Civilian Radioactive Waste program

Wednesday, March 31, 1999

DOE Laboratory Update—Idaho Nuclear Engineering and Environmental Laboratory
Report of NERAC Subcommittees
Public comment period.

Public Participation: The day and a half meeting is open to the public on a first-come, first-serve basis because of limited seating. Written statements may be filed with the committee before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Norton Haberman at the address or telephone listed above. Requests to make oral statements must be made and received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room. 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C. on February 12, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–4131 Filed 2–18–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[Docket No. FE C&E 99–2—Certification Notice—169]

Klamath Cogeneration Project, Notice of Filing of Coal Capability, Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On February 2, 1992, Klamath Cogeneration Project submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of the proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: City of Klamath Falls.
Operator: Pacific Klamath Energy, Inc.
Location: Klamath Falls, OR.
Plant Configuration: Combined cycle, topping-cycle cogeneration.
Capacity: 500 megawatts.
Fuel: Natural gas.
Purchasing Entities: 40% to PacifiCorp, 60% marketed by an affiliate of PacifiCorp to municipalities and public owned utilities.
In-service Date: July 1, 2001.

Issued in Washington, DC, February 9, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–4132 Filed 2–18–99; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[Docket No. FE C&E 99–1—Certification Notice—168]

Elwood Energy LLC; Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On February 2, 1992, Elwood Energy LLC submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of the proposed new baseload powerplant has filed a self-certification in acccordance with section 201(d).

Owner: Elwood Energy LLC.

Operator: Not yet determined.

Location: Elwood, IL.

Plant Configuration: Four simple cycle combustion turbines.

Capacity: 600 megawatts.

Fuel: Natural gas.

Purchasing Entities: Wholesale customers that may include utilities.

In-Service Date: Units 1 and 2—May and June 1999; Units 3 and 4—July 1999.

Issued in Washington, DC, February 9, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–4133 Filed 2–18–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–37–000]

AES Eastern Energy, L.P.; Notice of Filing

February 12, 1999.

Take notice that on February 8, 1999, AES Eastern Energy, L.P., c/o Mr. Henry Aszklar, Vice President, AES NY, L.L.C., General Partner, AES Eastern Energy, L.P., 1001 North 19th Street, Suite 2000, Arlington, VA 22209 (Applicant), filed with the Federal Energy Regulatory Commission a petition for declaratory order disclaiming jurisdiction and request for expedited consideration.

An affiliate of Applicant, AES NY, L.L.C., currently has rights to purchase from the New York State Electric & Gas Corporation and its affiliate, NGE Generation, Inc., the Kintigh and Milliken Generating Stations in New York State. The Kintigh Station is located in Barker, New York and is comprised of a steam turbine generating unit that provides a maximum of 688 MW of generating capacity. The Milliken Station is located in Lansing, New York and is comprised of two steam turbine generating units that provide a maximum of 306 MW of generating capacity. Applicant is seeking a disclaimer of jurisdiction over passive owner lessors, owner participants and owner trustees, in connection with a lease/leaseback-type financing involving the Kintigh and Milliken Facilities.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 10, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection or on the internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–4127 Filed 2–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–195–000]

Equitrans, L.P.; Notice of Technical Conference

February 12, 1999.

In the Commission's order issued on January 28, 1999, the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Thursday, February 25, 1999, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–4073 Filed 2–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–404–003]

Mississippi River Transmission Corporation; Notice Requesting Comments

February 12, 1999.

On January 29, 1999, Mississippi River Transmission Company (MRT) tendered for filing revised tariff sheets in this proceeding.[1] These sheets are substitutes for those originally filed by MRT on September 16, 1998, which were accepted for filing and suspended until March 17, 1999, subject to MRT making minor revisions in its filing and to the outcome of a technical conference. The instant filing was noticed February 2, 1999, with comments and protests due as provided in Section 154.210 of the Commission's Regulations.

Several parties to this proceeding have filed protests and comments on the MRT January 29 filing. In order that the Commission might have a more complete record on which to act, parties will be permitted to file answers to the protests and comments.

Any party desiring to answer the comments and protests of others should

[1] The revised tariff sheets are those listed in the Commission's notice of February 2, 1999 in this proceeding.

file the original and 14 copies of such answer with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, not later than February 19, 1999. The filing, comments, and protests may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–4074 Filed 2–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–205–000]

South Georgia Natural Gas Company; Notice of Request Under Blanket Authorization

February 12, 1999.

Take notice that on February 4, 1999, South Georgia Natural Gas Company (South Georgia), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP99–205–000, a request pursuant to Section 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new delivery point for service to Sowega Power L.L.C. (Sowega), under South Georgia's blanket certificate issued in Docket No. CP82–548–000, pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

South Georgia proposes to construct and operate certain measurement and other appurtenant facilities in order to provide transportation service to Sowega at a new delivery point for service at approximately Mile Post 8.4 of South Georgia's 10-inch Main Line in Mitchell County, Georgia. Specifically, South Georgia states that the estimated cost of the construction and installation of the facilities is approximately $395,000. It is further stated that Sowega would reimburse South Georgia for the cost of the constructing, installing and operating the proposed facilities.

South Georgia states that it will transport gas on behalf of Sowega under its Rate Schedule IT. South Georgia states the estimated average annual volumes for deliveries to the meter station are 4,000,000 MMBtu and the estimated daily average of 11,000 MMBtu, however, most of the annual requirements would be used in the summer months from May–September. It is further stated that the maximum delivery volumes are expected to be 25,000 MMBtu per day.

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) 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–4065 Filed 2–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP99–38–002, RP99–42–002, RP99–43–002, RP99–63–002]

Southern Natural Gas Company, South Georgia Natural Gas Company, Sea Robin Pipeline Company, Destin Pipeline Company, L.L.C.; Notice of Petition for Limited Extension of Time

February 12, 1999.

Take notice that on February 5, 1999, Southern Natural Gas Company, South Georgia Natural Gas Company, Sea Robin Pipeline Company and Destin Pipeline Company, L.L.C. (The Southern Pipelines) tendered for filing a petition requesting that the Commission extend the March 1, 1999 date set forth in the Commission's December 18, 1998, Order Granting Rehearing (85 FERC ¶ 61,386) to allow the Southern Pipelines to implement the intra-day nominations standards adopted in Order No. 587–G on May 1, 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 19, 1999. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–4075 Filed 2–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–196–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

February 12, 1999.

Take notice that on February 5, 1999, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP99–196–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205 and 157.211) under the Natural Gas Act (NGA) for authorization to construct and operate delivery point facilities in Anderson, South Carolina, under Transco's blanket certificate issued in Docket No. CP82–426–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Transco proposes to construct and operate delivery point facilities to accommodate deliveries to Clark-Schwebel Corporation (CSC), an industrial and end-user. Specifically, Transco proposes to install two 4-inch valve tap assemblies, a meter station and appurtenant facilities. Transco proposes to install the facilities at or near milepost 1158.75 on its mainline in Anderson. It is stated that CSC is currently negotiating with a third-party landowner for land rights at this location. Transco asserts that if CSC is

unable to acquire the land rights at this location, Transco will install the facilities at an alternate site, at or near milepost 1159.03 on its mainline in Anderson. It is explained that Transco will use the facilities to transport natural gas for CSC under its Rate Schedules FT, FT–R or IT, delivering up to 2,400 dt equivalent to CSC on a capacity release, secondary firm or interruptible basis. It is asserted that CSC would use the gas as fuel for its manufacturing plant.

It is estimated that the cost of the facilities would be approximately $263,000, and it is stated that Transco would be reimbursed by CSC for all construction costs. It is stated that Transco's tariff does not prohibit the addition of new delivery points. It is asserted that the proposed deliveries will have no significant impact on Transco's peak day or annual deliveries.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–4063 Filed 2–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–197–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

February 12, 1999.

Take notice that on February 5, 1999, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396 Houston, Texas 77251, filed and supplemented on February 9, 1999, in Docket No. CP99–197–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct, own, and operate a new delivery point to the city of Greenwood (Greenwood) in Greenville County, South Carolina under Transco's blanket certificate issued in Docket No. CP82–426–000 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 application may be viewed on the web at www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Transco states that Greenwood requested that Transco construct the East Greenwood Meter station. The meter station will be located at milepost 1179.56 on Transco's mainline system in Greenville County, South Carolina. The point of delivery will be used by Greenwood to receive gas into its local distribution system. The meter station will consist of two eight-inch taps on Transco's pipeline, dual six-inch orifice meter tubes, odorization equipment, and data acquisition and communication equipment.

Transco states that the meter station will be used by Greenwood to receive into its distribution system up to 36,000 dekatherms of gas per day. Transco states that it has sufficient system delivery flexibility to accomplish such additional deliveries without detriment or disadvantage to Transco's other customers. Transco states that this proposal will have no impact on its peak day deliveries and little or no impact on its annual deliveries, and is not prohibited by Transco's FERC Gas Tariff. Transco states that the estimated cost to construct is $472,300 and that Greenwood will be responsible for all cost associated with this project.

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 if 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–4064 Filed 2–18–99; 8:45 am]

BILLING CODE 6717–01–M

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company

[Docket No. ER99–1730–000]

Take notice that on February 5, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 10–3 to add Allegheny Power, DTE Energy Trading, Inc., Duke Solutions, Inc., FirstEnergy Trading & Power Marketing, Inc., and Virginia Electric & Power Company to Allegheny Power's Open Access Transmission Service Tariff.

The proposed effective date under the agreements is January 5, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company

[Docket No. ER99–1731–000]

Take notice that on February 5, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 15 to add three (3) new Customers to the Market Rate Tariff under which Allegheny Power, offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of February 4, 1999, to Duke Solutions, Inc., Florida Power & Light Company and FPL Energy Services, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the

Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company

[Docket No. ER99–1732–000]

Take notice that on February 5, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 47 to add DelMarva Power & Light Company to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is February 4, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. California Independent System Operator Corporation

[Docket No. ER99–1733–000]

Take notice that on February 5, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between Tosco Refining Company (Tosco Refining) and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on Tosco Refining and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective as of February 1, 1999.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. California Independent System Operator Corporation

[Docket No. ER99–1734–000]

Take notice that on February 5, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Idaho Power Company for acceptance by the Commission.

The ISO states that this filing has been served on Idaho Power Company and the California Public Utilities Commission.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. California Independent System Operator Corporation

[Docket No. ER99–1735–000]

Take notice that on February 5, 1999, the California Independent System Operator Corporation (ISO) tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and Big Creek Water Works, Ltd. (Big Creek) for acceptance by the Commission.

The ISO states that this filing has been served on Big Creek and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of February 2, 1999.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER99–1736–000]

Take notice that on February 5, 1999, the California Independent System Operator Corporation (ISO) tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and Tosco Refining Company (Tosco Refining) for acceptance by the Commission.

The ISO states that this filing has been served on Tosco Refining and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of February 1, 1999.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC96–19–048, et al.]

California Power Exchange Corp., et al.; Electric Rate and Corporate Regulation Filings

February 11, 1999.

Take notice that the following filings have been made with the Commission:

1. California Power Exchange Corp.

[Docket Nos. EC96–19–048 and ER96–1663–050]

Take notice that on January 8, 1999, the California Power Exchange Corp (PX) tendered for filing certain amendments to its Bylaws. PX states that the filing is in compliance with the Commission's November 24, 1998 order in this docket.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. WKE Station Two Inc.

[Docket Nos. EC99–32–000 and ER99–1755–000]

Take notice that on February 4, 1999, WKE Station Two Inc., Western Kentucky Energy Corp., and LG&E Energy Marketing Inc. (Collectively, the ''Applicants'') filed an Application for Approval of Intra-Corporate Reorganization Under Section 203 of the Federal Power Act. The filing requests that the Commission approve certain transactions by the Applicants and their affiliate WKE Corp. The proposed transactions are intended to consolidate in one entity, WKEC, to the maximum extent possible, the operation and maintenance of, and sale of power generated by, certain generating plants located in Western Kentucky.

The Applicants also tendered for filing, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1994), and Part 35 of the Commission's Regulations, an Application for approval of reassignment of network transmission rights and confirmation of waivers and blanket authorizations, and notifications of change in status.

The Application requests that the Commission (1) either confirm that LEM is pre-authorized to reassign to WKEC the whole of its rights to network transmission service on Big Rivers Electric Corporation's transmission system that LEM uses to meet power sales obligations that will be transferred from LEM to WKEC as part of an intra-corporate consolidation, or grant such authorization at this time, and (2) confirm the continued applicability,

following the consummation of the consolidation, of waivers of certain Commission regulations and blanket authorizations previously granted to WKEC.

A copy of the filing was served upon the Kentucky Public Service Commission and all parties in Docket Nos. ER94–1188, ER98–1278, and ER98–1279.

The Applicants further tendered for filing Notice of Cancellation of its Rate Schedule FERC No. 1, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1994), and Section 35.15 of the Commission's Regulations, 18 CFR 35.15.

WKE Station Two Inc., requests that its Notice of Cancellation be made effective as of February 4, 1999.

A copy of the filing was served upon the Kentucky Public Service Commission and all parties in Docket No. ER98–1278.

Comment date: February 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Edison Mission Marketing & Trading, Inc.

[Docket No. ER99–852–001]

Take notice that on February 5, 1999, Edison Mission Marketing & Trading, Inc., tendered for filing its Compliance Filing in the above-referenced docket.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Virginia Electric and Power Company

[Docket No. ER99–1724–000]

Take notice that on February 5, 1999, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with PP&L EnergyPlus co. (Transmission Customer) under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide Non-firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of February 5, 1999.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Virginia Electric and Power Company

[Docket No. ER99–1725–000]

Take notice that on February 5, 1999, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with PP&L EnergyPlus Co. (Transmission Customer) under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide Firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of February 5, 1999, the date of filing of the Service Agreement.

Copies of the filing were served upon Ameren Services Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER99–1726–000]

Take notice that on February 5, 1999, Cinergy Services, Inc. (Cinergy) tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and PP&L EnergyPlus Co. (PP&L).

Cinergy and PP&L are requesting an effective date of January 15, 1999.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. CinCap VI, LLC

[Docket No. ER99–1727–000]

Take notice that on February 5, 1999, CinCap VI, LLC (CinCap VI) submitted for approval CinCap VI's Rate Schedule No. 1; a Code of Conduct; a request for certain blanket approvals, including the authority to sell electricity at market-based rates; and a request for waiver of certain Commission regulations. CinCap VI, a Delaware limited liability company, is a wholly-owned subsidiary of Cinergy Capital & Trading, Inc. CinCap VI has requested an April 6, 1999 effective date for Rate Schedule No. 1.

15. California Independent System Operator Corporation

[Docket No. ER99–1737–000]

On February 5, 1999, the California Independent System Operator Corporation (ISO) tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and Idaho Power Company for acceptance by the Commission.

The ISO states that this filing has been served on Idaho Power Company and the California Public Utilities Commission.

The ISO is requesting that the Meter Service agreement be made effective as of February 1, 1999.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Duquesne Light Company

[Docket No. ER99–1738–000]

Take notice that on February 5, 1999, Duquesne Light Company (Duquesne) tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with CNG Retail Services Corp. (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of January 1, 1999.

Copies of this filing were served upon Customer.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Carolina Power & Light Company

[Docket No. ER99–1739–000]

Take notice that on February 5, 1999, Carolina Power & Light Company (CP&L) tendered for filing Service Agreements for Short-Term Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service with Ameren Services Company. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of January 20, 1999 for these Agreements.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Portland General Electric Company

[Docket No. ER99–1740–000]

Take notice that on February 5, 1999, Portland General Electric Company (PGE) tendered for filing an amendment to the Long-Term Exchange Agreement between the Public Utility District No. 1 of Chelan County, Washington and PGE (PGE Electric Rate Schedule FERC No. 71, Docket No. ER89–513–000).

A copy of this filing was served on the Public Utility District No. 1 of Chelan County, Washington.

PGE respectfully requests that the amendment become effective as of February 5, 1999.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. United American Energy Corp.

[Docket No. ER99–1744–000]

Take notice that on February 5, 1999, United American Energy Corp. (UAE), on behalf of UAE Lowell Power, L.L.C. (ULP), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting ULP's FERC Electric Rate Schedule No. 1 to be effective on April 1, 1999 or on the date ULP's acquisition of the UAE Lowell Power Facility, a generation facility in Massachusetts, closes.

ULP intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where ULP sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Western Systems Power Pool

[Docket No. ER99–1747–000]

Take notice that on February 5, 1999, Puget Sound Energy, Inc. (Puget Sound) tendered for filing a Certificate of Concurrence to the Revised Western Systems Power Pool (WSPP) Agreement dated November 6, 1998.

Puget Sound states that a copy of the filing was served upon the parties to the WSPP.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Western Systems Power Pool

[Docket No. ER99–1749–000]

Take notice that on February 5, 1999, Puget Sound Energy, Inc. (Puget Sound) tendered for filing a Certificate of Concurrence to the Western Systems Power Pool (WSPP) Pro Forma Open Access Transmission Tariff filed July 14, 1997.

Puget Sound states that a copy of the filing was served upon the parties to the WSPP.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Bruin Energy, Inc., d/b/a The Mack Services Group

[Docket No. ER99–1750–000]

Take notice that on February 5, 1999, Bruin Energy, Inc. filed a letter reporting a change in status that reflects a departure from the facts relied upon by the Commission in the grant of market based rate authority.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Aquila Energy Marketing Corporation

[Docket No. ER99–1751–000]

Take notice that on February 5, 1999, Aquila Energy Marketing Corporation tendered for filing a notice of succession, adopting the rate schedule of Aquila Power Corporation effective January 12, 1999. On January 12, 1999, Aquila Power Corporation changed its name to Aquila Energy Marketing Corporation.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. UtiliCorp United Inc.

[Docket No. ES99–25–000]

Take notice that on January 29, 1999, UtiliCorp United Inc. (UtiliCorp) submitted an application, under Section 204 of the Federal Power Act, for authorization to issue corporate guarantees in support of debt securities up to $625,000,000 (NZ) (approximately $334.3 million U.S.) to be issued by a UtiliCorp subsidiary at some time(s) before June 30, 1999.

UtiliCorp also requested that the issuance of the securities be exempted from compliance with the Commission's competitive bid or negotiated placement requirements at 18 CFR 34.2.

Comment date: March 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Pine Bluff Energy LLC

[Docket No. QF97–61–003]

Take notice that on February 1, 1999, Pine Bluff Energy LLC filed supplemental information to their application for certification of the Pine Bluff Energy Center as a qualifying cogeneration facility in response to a request from the Commission Staff to provide a more detailed accounting of the steam usage for their process steam host.

Comment date: March 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Western Systems Power Pool

[Docket No. ER99–1748–000]

Take notice that on February 5, 1999, Puget Sound Energy, Inc. (Puget Sound) tendered for filing a Certificate of Concurrence to the Western Systems Power Pool's (WSPP) Revised Agreement and Open Access Transmission Tariff filed July 29, 1998.

Puget Sound states that a copy of the filing was served upon the parties to the WSPP.

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. PacifiCorp

[Docket No. OA97–411–006]

Take notice that, on February 8, 1999, PacifiCorp submitted a compliance filing and revised the organizational charts and job descriptions posted on its OASIS in response to the Commission's July 31, 1998 Order on Standards of Conduct.[1]

Comment date: February 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–4062 Filed 2–18–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1756–000, et al.]

Wisconsin Electric Power Company, et al.; Electric Rate and Corporate Regulation Filings

February 12, 1999.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Company

[Docket No. ER99–1756–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric), on February 8, 1999, tendered for filing, an electric service agreements under its Market Rate Sales Tariff (FERC Electric

[1] Allegheny Power Service Corporation, 84 FERC ¶ 61,131, *order on rehearing and clarification*, 84 FERC ¶ 61,316 (1998).

Tariff, Original Volume No. 8) and its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2) with Strategic Energy Ltd. Wisconsin Electric respectfully requests an effective date of February 5, 1999 to allow for economic transactions.

Copies of the filing have been served on Strategic Energy Ltd., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: March 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. The Empire District Electric Company

[Docket No. ER99–1757–000]

Take notice that The Empire District Electric Company (Empire), submitted for filing on February 8, 1999, pursuant to Rule 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its proposed power sales tariff for the sale of energy and capacity at market-based rates and its proposed rate schedule for sale, assignment or transfer of transmission rights.

Comment date: March 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Nevada Power Company

[Docket No. ER99–1769–000]

Notice is hereby given that effective the 1st day of October 1998, Service Agreement Nos. 4 and 5 under FERC Electric Tariff, Original Volume 3, effective October 1, 1997 and filed with the Federal Energy Regulatory Commission by Nevada Power Company are to be canceled.

Notice of the proposed cancellation has been served upon the following: The Public Utilities Commission of Nevada, the Utility Consumer's Advocate, Valley Electric Association, and Lincoln County Power District No. 1.

Comment date: March 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. South Carolina Electric & Gas Company

[Docket No. ER99–1758–000]

Take notice that on February 8, 1999, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement establishing AMP-Ohio as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the date of filing. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon AMP-Ohio and the South Carolina Public Service Commission.

Comment date: March 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. AES Eastern Energy, L.P.; AES Creative Resources, L.P.

[Docket No. ER99–1761–000]

On February 8, 1999, AES Eastern Energy, L.P. and AES Creative Resources, L.P., c/o Mr. Henry Aszklar, Vice President, AES NY, L.L.C., the general partner of AES Creative Resources, L.P. and AES Eastern Energy, L.P. (AES Eastern and AES Resources), 1001 North 19th Street, Arlington, VA 22209, filed with the Federal Energy Regulatory Commission an application for authority to charge market-based rates for wholesale sales of ancillary services. AES Eastern and AES Resources respectfully request expedited action on this application by March 25, 1999, and waiver of advance notice for the rates to become effective upon the transfer of the New York Assets.

Comment date: March 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. South Carolina Electric & Gas Company

[Docket No. ER99–1760–000]

Take notice that on February 8, 1999, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement establishing Cargill-Alliant, LLC as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the date of filing. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon Cargill-Alliant, LLC and the South Carolina Public Service Commission.

Comment date: March 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. South Carolina Electric & Gas Company

[Docket No. ER99–1759–000]

Take notice that on February 8, 1999, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement establishing Cargill-Alliant, LLC as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon Cargill-Alliant, LLC and the South Carolina Public Service Commission.

Comment date: March 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Avista Corporation

[Docket No. ER99–1763–000]

Take notice that on February 8, 1999, Avista Corporation, (formerly known as The Washington Water Power Company), tendered for filing, with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an executed Mutual Netting Agreement allowing for arrangements of amounts which become due and owing to one Party to be set off against amounts which are due and owing to the other Party with PacifiCorp Power Marketing, Inc. Avista Corporation requests waiver of the prior notice requirement and requests an effective date of February 1, 1999.

Comment date: March 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. K N Services, Inc.

[Docket No. ER99–1762–000]

Take notice that K N Services, Inc. (KNS), a marketer of electric power, has filed a notice of cancellation of its Rate Schedule FERC No. 1, pursuant to section 205 of the Federal Power Act, 16 USC 824d (1994), and section 35.15 of the Commission's regulations, 18 CFR 35.15 (1998). KNS proposes for its cancellation to be effective on April 9, 1999.

Comment date: March 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Western Systems Power Pool

[Docket No. ER91–195–027, ER91–195–028, ER91–195–029, No. ER91–195–030, No. ER91–195–031, ER91–195–032, ER91–195–033]

Take notice that on February 8, 1999, the Western Systems Power Pool (WSPP), filed a supplement to its October 21, 1998 compliance filing made in response to the deficiency letter issued September 22, 1998 by the Division of Rate Applications in the proceedings listed above.

WSPP states that the purpose of this filing is to provide the information required by the deficiency letter for certain members for whom the quarterly reports required by the Federal Energy Regulatory Commission's (Commission) earlier orders in this proceeding have not been filed. Pursuant to 18 CFR 385.211 (1998), WSPP has requested privileged treatment for some of the information. Copies of WSPP's

informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

Comment date: March 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of New Mexico

[Docket No. ER99–1753–000]

Take notice that on February 8, 1999, Public Service Company of New Mexico (PNM), submitted for filing an executed service agreement, for electric power and energy sales at negotiated rates under the terms of PNM's Power and Energy Sales Tariff, with Texas-New Mexico Power Company (dated January 6, 1999). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to Texas-New Mexico Power Company and to the New Mexico Public Regulation Commission.

Comment date: March 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company

[Docket No. ER99–1452–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on February 8, 1999, tendered an amendment in the above-referenced filing. The amendment changes the name of the prospective Transmission Customer to Southwestern Public Service Company in lieu of New Century Energies.

Wisconsin Electric renews its requested effective date of sixty days from January 25, 1999. Wisconsin Electric is authorized to state that Southwestern Public Service Company joins in the requested effective date.

Copies of the filing have been served on Southwestern Public Service Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: March 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Starghill Alternative Energy Corporation; Energy Unlimited, Inc.; IEP Power Marketing, LLC; Tosco Power, Inc.; Merchant Energy Group of the Americas, Inc.; NUI Corporation, et al.; GPU Advanced Resources, Inc.

[Docket No. ER97–4680–004, ER98–1622–004, ER95–802–015, ER96–2635–008, ER98–1055–004, ER98–1055–004, ER96–2580–010, ER97–3666–007, and ER97–3666–008]

Take notice that on February 8, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

14. TransCurrent, LLC

[Docket No. ER98–1297–002]

Take notice that on February 8, 1999, TransCurrent, LLC (TransCurrent) filed a petition, dated December 16, 1997, to the Commission regarding the acceptance of initial rate schedule, waivers and blanket authority, requesting acceptance of TransCurrent Rate Schedule FERC No. 1. The Commission accepted the submittal for filing and it was designated and made effective June 17, 1998.

In a notice of amendment, dated December 29, 1998, TransCurrent informed FERC through the Office of the Secretary that the ownership structure of TransCurrent's had changed.

As of July 1, 1998, the owners of TransCurrent were:

- Kraftholding USA AS (100,000 members' interests representing 50% of all members' interests of TransCurrent), a Norwegian company owned by private investors.
- Vattenfall International AB (100,000 members interests representing 50% of all members' interests of TransCurrent), a Swedish company. Vattenfall International AB is a wholly owned subsidiary of Vattenfall AB (publ), a Swedish company wholly owned by the state of Sweden.

Effective as of December 18, 1998, Vattenfall International AB transferred all of its members' interests in TransCurrent to Vattenfall International Inc., a Delaware company. Vattenfall International Inc. is a wholly owned subsidiary of Vattenfall International AB.

Vattenfall International Inc. has also, effective as of December 18, 1998, acquired all of Vattenfall International AB's 360,000 Class A and 170,250 Class B member' interests in California Polar Power Brookers, LLC (''Calpol''). Vattenfall International Inc.''s Class A members'' interests represent 33.3% of all Class A members' interests and 16.4% of all Class B members' interests in Calpol.

As of December 18, 1998, the owners of TransCurrent were:

- Kraftholding USA AS (100,000 members' interests representing 50% of all members' interests of TransCurrent), a Norwegian company owned by private investors.
- Vattenfall International Inc. (100,000 members interests representing 50% of all members' interests of TransCurrent), a Delaware company. Vattenfall International Inc. is a wholly owned subsidiary of Vattenfall International AB, which is a wholly owned subsidiary of Vattenfall AB (publ), a Swedish company wholly owned by the state of Sweden.

Furthermore, Vattenfall International Inc. has, effective as of January 15, 1999, converted a loan to TransCurrent into 100,000 new members' interests.

As of January 15, 1999, the owners of TransCurrent are:

- Kraftholding USA AS (100,000 members' interests, representing 33 and 1/3% of all members' interests of TransCurrent), a Norwegian company owned by private investors.
- Vattenfall International Inc. (200,000 members' interests, representing 66 and 2/3% of all members' interests of TransCurrent), a Delaware company. Vattenfall International Inc. is a wholly owned subsidiary of Vattenfall International AB, which is a wholly owned subsidiary of Vattenfall AB (publ), a Swedish company wholly owned by the state of Sweden.

Vattenfall AB (publ) is engaged in generation, transmission and sales of electricity in the Nordic countries (Sweden, Norway, Finland and Denmark) and in Europe. The Vattenfall group is also, by itself and together with other external entities (e.g. NRG Energy, Inc.) involved in generation, transmission and sales of electricity and in production of generation and transmission facilities in South East Asia and South America. Neither Vattenfall AB, nor any of its subsidiaries owns or controls any generation or transmission (gas or electricity) facilities in the United States of America or Canada, nor do they have any franchise area for the sale of electricity in the said countries.

The changes in ownership status will not have any effect on TransCurrent's authority to charge market-based rates.

TransCurrent has also moved to a new location and the new address is: TransCurrent, LLC, World Trade Center, Suite 315, San Francisco, CA 94111. Tel. (415) 392–9080; Fax. (415) 392–9085.

Comment date: March 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–4126 Filed 2–18–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

February 12, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: New Minor License.

b. Project No.: 2927–004.

c. Date Filed: September 29, 1997.

d. Applicant: Aquamac Corporation.

e. Name of Project: Aquamac Hydroelectric Project.

f. Location: On the Merrimack River, in the city of Lawrence, Essex County, Massachusetts. The project would not utilize federal lands.

g. Filed pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Mr. Gerard J. Griffin, Jr., Aquamac Corporation, 9 South Canal Street, Lawrence, MA 01842, (508) 686–0342.

i. FERC Contact: Any questions on this notice should be addressed to Lee Emery, E-mail address, lee.emery@ferc.fed.us, or telephone (202) 219–2779.

j. Deadline for comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of environmental analysis: This application has been accepted for filing and is ready for environmental analysis at this time.

l. Description of the Project: The existing run-of-river project uses flows diverted into the South Canal by the upstream Lawrence Hydroelectric Project (P–2800) and consists of the following existing facilities: (1) a trashrack structure; (2) manually operated headgate and penstock: (3) a powerhouse containing one generating unit with an installed capacity of 250-kW; and (4) other appurtenances.

m. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address shown in item h.

n. This notice also consists of the following standard paragraphs: A4 and D10.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person, submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–4066 Filed 2–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

February 12, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: New Minor License.

b. Project No.: 2928–004.

c. Date Filed: September 29, 1997.

d. Applicant: Merrimac Paper Company, Inc.

e. Name of Project: Merrimac Hydroelectric Project.

f. Location: On the Merrimack River, in the city of Lawrence, Essex County, Massachusetts. The project would not utilize federal lands.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Mr. Gerard J. Griffin, Jr., Merrimac Paper Company, Inc., 9 South Canal Street, Lawrence, MA 01842, (508) 686–0342.

i. FERC Contact: Any questions on this notice should be addressed to Lee Emery, E-mail address, lee.emery@ferc.fed.us, or telephone (202) 219–2779.

j. Deadline for comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of environmental analysis: This application has been accepted for filing and is ready for environmental analysis at this time.

l. Description of the Project: The existing run-of-river project uses flows diverted into the South Canal by the upstream Lawrence Hydroelectric Project (P–2800) and consists of the following existing facilities: (1) a trashrack structure; (2) manually operated headgate and penstock; (3) two integral powerhouses with two generating units in one powerhouse and one generating unit in the other for a total installed capacity of 1,250-kW; and (4) other appurtenances.

m. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address shown in item h.

n. This notice also consists of the following standard paragraphs: A4 and D10.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–4067 Filed 2–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11675–000.

c. Date Filed: February 4, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Caesar Creek Lake Dam Hydroelectric Project.

f. Location: On the Caesar Creek near the town of Oregonia, in Warren County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone 202–219–2778.

j. Deadline for filing comments, motions to intervene, and protests: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission

to serve a copy of the document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of the Project: The project would be located at the existing U.S. Army Corps of Engineers Caesar Creek Lake Dam and would consist of the following proposed facilities: (1) a 40-foot-long, 84-inch-diameter penstock; (2) a powerhouse on the tailrace side of the dam housing a single turbine generating unit with an installed capacity of 1,500 kW; (3) a 500-foot-long, 14.7 kV transmission line; and (4) other appurtenances.

Applicant estimates that the average annual generation would be 9,000 MWh and that the cost of the studies under the permit would be $750,000.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

c. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–4068 Filed 2–18–99; 8:45 am]

BILLING CODE 6711–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11676–000.

c. Date Filed: February 4, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Grays Landing Lock and Dam Hydroelectric Project.

f. Location: On the Monongahela River near the town of Grays Landing, in Fayette County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)—825(r).

h. Applicant Contact: Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone 202–219–2778.

j. Deadline for filing comments, motions to intervene, and protests: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of the Project: The project would be located at the existing U.S. Army Corps of Engineers Grays Landing Lock and Dam and would consist of the following proposed facilities: (1) two 40-foot-long, 126-inch-diameter penstocks; (2) a powerhouse on the tailrace side of the dam housing two turbine generating units with a total installed capacity of 5,000 kw; (3) a 1,500-foot-long, 14.7 kV transmission line; and (4) other appurtenances.

Applicant estimates that the average annual generation would be 31,000 MWh and that the cost of the studies under the permit would be $1,250,000.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'' ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-number documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments with the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–4069 Filed 2–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. Type of Application: Preliminary Permit.

b. Project No.: 11677–000.

c. Date Filed: February 4, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Curwensville Dam Hydroelectric Project.

f. Location: On the West Branch of the Susquehanna River near the town of Curwensville, in Clearfield County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone 202–219–2778.

j. Deadline for filing comments, motions to intervene, and protests: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of the Project: The project would be located at the existing U.S. Army Corps of Engineers Curwensville Dam and would consist of the following proposed facilities: (1) two 200-foot-long, 40-inch-diameter penstocks; (2) a powerhouse on the tailrace side of the dam housing two turbine generating units with a total installed capacity of 1,740 kW; (3) a 1.5-mile-long, 14.7 kV transmission line; and (4) other appurtenances.

Applicant estimates that the average annual generation would be 11,000 MWh and that the cost of the studies under the permit would be $800,000.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular applications.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–4070 Filed 2–18–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted For Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11678–000.

c. *Date Filed:* February 4, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Foster Joseph Sayers Dam Hydroelectric Project.

f. *Location:* On the Bald Eagle Creek near the town of Blanchard, in Centre County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone 202–219–2778.

j. Deadline for filing comments, motions to intervene, and protests: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of the Project: The project would be located at the existing U.S. Army Corps of Engineers Foster Joseph Sayers Dam and would consist of the following proposed facilities: (1) Two 100-foot-long, 36-inch-diameter penstocks; (2) a powerhouse on the tailrace side of the dam housing two turbine generating units with a total installed capacity of 1,150 kW; (3) a 400-foot-long, 14.7 kV transmission line; and (4) other appurtenances.

Applicant estimates that the average annual generation would be 7,000 MWh and that the cost of the studies under the permit would be $600,000.

1. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (call (202) 208–222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application not later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in the public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATIONS'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-name documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commisssion, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–4071 Filed 2–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 12, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11679–000.

c. *Date Filed:* February 4, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Montgomery Lock and Dam Hydroelectric Project.

f. *Location:* On the Ohio River near the town of Sewickley, in Beaver County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Any questions on the this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone 202–219–2778.

j. Deadline for filing comments, motions to intervene, and protests: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of the Project: The project would be located at the existing U.S. Army Corps of Engineers Montgomery Lock and Dam and would consist of the following proposed facilities: (1) nine 35-foot-long, 96-inch-diameter penstocks; (2) a powerhouse on the tailrace side of the dam housing nine turbine generating units with a total installed capacity of 18,000 kW; (3) a 400-foot-long, 14.7 kV transmission line; and (4) other appurtenances.

Applicant estimates that the average annual generation would be 113,000 MWh and that the cost of the studies under the permit would be $2,200,000.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorized construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NW, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–4072 Filed 2–18–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6301–3]

Federal Operating Permits Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Elsewhere in today's **Federal Register**, EPA published amendments to its final rule for the Clean Air Act (CAA) Federal Operating Permits Program which require that covered sources in Indian country submit permit applications to EPA no later than 1 year from the effective date of the rulemaking. The final rule becomes effective on March 22, 1999. The purpose of this informational notice is to provide additional notice to stationary air sources that are located in Indian country or in areas for which EPA believes the Indian country status

is in question that they should consult the final rule (which is being adopted into 40 CFR part 71) to determine whether they are subject to it. Also, this informational notice informs stationary sources of the appropriate contact persons in EPA's Regional Offices who can provide additional information about submitting permit applications.

SUPPLEMENTARY INFORMATION: For further information on application due dates and details about how to obtain and submit applications, contact the person listed below at the appropriate EPA Regional Office.

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont): Ms. Ida Gagnon, U.S. Environmental Protection Agency, 1 Congress Street, Suite 1100 (CAP), Boston, MA 02114–2023. Telephone: (617) 918–1653. E-mail address: gagnon.ida@epamail.epa.gov.

Region II (New Jersey, New York): Mr. Steven Riva, U.S. Environmental Protection Agency, 290 Broadway, 25th floor, New York, NY 10007. Telephone: (212)637–4249. E-mail address: riva.steven@epamail.epa.gov.

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee): Ms. Gracy R. Danois, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth St., Atlanta, GA 30303. Telephone: (404) 562–9119. E-mail address: danois.gracy@epa.gov.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin): Mr. Robert Miller, U.S. Environmental Protection Agency, Region V (AR–18J), 77 West Jackson Blvd., Chicago, IL 60604. Telephone: (312) 353–0396. E-mail address: miller.robert@epamail.epa.gov.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): Ms. Jole Luehrs, U.S. Environmental Protection Agency, 1445 Ross Ave., Suite 700 (6PD–R), Dallas, TX 75202. Telephone: (214) 665–7250. E-mail address: luehrs.jole@epamail.epa.gov.

Region VII (Iowa, Kansas, Missouri, Nebraska): Mr. Ward Burns, Air Permitting and Compliance Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101–2728. Telephone: (913) 551–7960. E-mail address: burns.ward@epamail.epa.gov.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming): Ms. Monica Morales, U.S. Environmental Protection Agency, Region VIII, Air & Radiation Program (8P–AR), 999 18th Street, Suite #500, Denver, CO 80202. Telephone: (303) 312–6936. E-mail address: morales.monica@epamail.epa.gov.

Region IX (Arizona, California, Hawaii, Nevada): Mr. Steve Branoff, U.S. Environmental Protection Agency, Region 9, AIR–3, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1290. E-mail address: branoff.steve@epa.gov.

Region X (Alaska, Idaho, Oregon, Washington): Ms. Elizabeth Waddell, U.S. Environmental Protection Agency, OAQ–107, 1200 Sixth Avenue, Seattle, Washington, 98101. Telephone: (206) 553–4303. E-mail Address: waddell.elizabeth@epamail.epa.gov.

Dated: February 8, 1999.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 99–3660 Filed 2–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5499–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR 564–7153. Weekly receipt of Environmental Impact Statements filed February 08, 1999 through February 12, 1999, Pursuant to 40 CFR 1506.9.

EIS No. 990040, DRAFT EIS, FHW, MD, MD–32 Planning Study, Transportation Improvement from MD 108 to Interstate 70, Funding, NPDES Permit and COE Section 404 Permit, Howard County, MD, Due: April 19, 1999, Contact: Pamela S. Stephenson (410) 962–4342.

EIS No. 990041, DRAFT EIS, AFS, NM, Agua/Caballos Timber Sale, Harvesting Timber and Managing Existing Vegetation, Implementation, Carson National Forest, El Rito Ranger District, Taos County, NM, Due: April 09, 1999, Contact: Kurt Winchester (505) 581–4554.

EIS No. 990042, FINAL EIS, NPS, TN, Stones River National Battlefield General Management Plan and Development Concept Plan, Implementation, Ruthford County, TN, Due: March 22, 1999, Contact: Mary Ann Peckhams (615) 893–9501.

EIS No. 990043, DRAFT EIS, BLM, Programmatic EIS Surface Management Regulations for Locatable Mineral Operation, (43 CFR 3809), Public Land, Due: April 20, 1999, Contact: Paul McNutt (775) 861–6604.

EIS No. 990044, FINAL EIS, DOE, NM, Los Alamos National Laboratory Continued Operation Site-Wide, Implementation, Los Alamos County, NM, Due: March 22, 1999, Contact: John Ordaz (301) 903–8055.

Dated: February 16, 1999.

William D. Dickerson,

Director, Office of Federal Activities.

[FR Doc. 99–4165 Filed 2–18–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6240–1]

Environmental Impact Statements and Regulations, Availability of EPA Comments

Availability of EPA comments prepared January 25, 1999 Through January 29, 1999 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, 1999 (62 FR 17856).

Draft EISs

ERP No. D–COE–J36049–00 Rating EC2, East Grand Forks, Minnesota and Grand Forks, North Dakota Flood Control and Flood Protection, Red River Basin, MN and ND.

Summary: EPA expressed environmental concern over the lack of information regarding the relationship of the proposed action to the proposed Devils Lake Outlet. EPA also expressed concern over the use of rip-rap for bank protection, and recommended that the Corps examine the issue from a broad, basin-wide approach.

ERP No. D–DOE–A09829–00 Rating EC2, Spallation Neutron Source (SNS) Facility Construction and Operation, Implementation and Site Selection, Oak Ridge National Laboratory, Oak Ridge, TN; Argonne National Laboratory, Argonne, IL; Brookhaven National Laboratory, Upton, NY; and Los Alamos National Laboratory, Los Alamos, NM.

Summary: EPA has expressed environmental concerns and requested a more detailed analysis of the preferred alternative, more detailed analysis of one of the non-preferred alternatives, additional mitigations for wetlands impacted areas, and the exposure dose factors used by DOE.

ERP No. D–IBR–K28020–CA Rating EC2, Contra Costa Water District Multi-

Purpose Pipeline (MPP) Project, Construction and Operation of Raw Water Delivery System, Contra Costa Canal, COE Section 10 and 404 Permits, Contra Costa County, CA.

Summary: EPA expressed environmental concerns regarding the significant potential cumulative impacts of the project and requested information on means to mitigate these impacts.

ERP No. D–NPS–J65285–MT Rating EO2, Interagency Bison Management Plan for State of Montana and Yellowstone National Park, Implementation, Maintain a wild, Free Ranging Population, Address the risk of Brucellosis Transmission, Park and Gallatin Counties, MT.

Summary: EPA expressed environmental objections about reasonable alternative that have not been considered in detail in the document. This document is an improper segmentation of NEPA and it appears that there has not been government-to-government consultation performed with concerned Tribes, especially when some tribes have officially requested that they be consulted with on this matter.

Final EISs

ERP No. F–AFS–J67027–MT Stillwater Mine Revised Waste Management Plan and Hertzler Tailings Impoundment, Construction and Operation, Plan-of-Operation, and COE Section 404 Permit, Custer National Forest, Stillwater County, MT.

Summary: EPA expressed environmental concerns about the cumulative effect of the mine on water quality. Nitrate levels in ground and surface waters are expected to increase over time.

ERP No. F–BLM–K65198–00 Rangeland Health Standards and Guidelines for Livestock Grazing on Public Rangelands in California and Northwestern Nevada, CA and NV.

Summary: The Final EIS addresses the majority of our concerns however EPA recommended the ROD include clear rationale for the differences between S&Gs for the three RACs, specific criteria to be used to prioritize allotments for corrective action, expand the implementation plan to include specific timelines and triggers for action and that BLM consider drinking water supplies when trying to meet water quality management objectives.

ERP No. F–BLM–K67047–NV, Trenton Canyon Mining Project, Construction, Operation and Expansion, Plan of Operation, Valma and North Peak Deposits, Humboldt and Lander Counties, NV.

Summary: EPA's concerns have been adequately addressed in the Final EIS. EPA requested that the Record of Decision (ROD) include specific mitigation and monitoring provisions to ensure protection of certain aquatic resources and describe contingency plans for unanticipated adverse environmental impacts.

ERP No. F–COE–E32196–FL, Jacksonville Harbor Navigation Channel Deepening Improvements, Construction, St. Johns River, Duval County, FL.

Summary: EPA expressed environmental concerns about the possibility of using the offshore disposal site for any of the limestone excavated during the deepening operations.

ERP No. F–FRC–J02035–00, Alliance Natural Gas Pipeline Project, Construction and Operation, Funding, NPDES Permit, COE Section 10 and 404 Permit, ND, MN, IA and IL.

Summary: EPA expressed environmental concerns regarding system alternatives, route variations and wetland mitigation and compensation.

ERP No. F–NPS–K70007–00, P140 Coaxial Cable Removal Project, Plan Approval and Permits Issuance, Socorro, New Mexico to Mojave, California, NM, CA and NV.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–L61221–AK, Sitka National Historical Park, General Management Plan, Implementation, City and Borough of Sitka, AK.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FA–COE–K36009–CA, Napa River and Napa Creek Flood Protection Project, New Information, City of Napa, Napa County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: February 16, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–4166 Filed 2–18–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6304–3]

National Drinking Water Advisory Council

Small Systems Implementation Working Group; Notice of Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the Small Systems Implementation Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S. C. S300f *et seq.*), will be held on March 1 and 2, 1999 at the Baltimore Marriott Inner Harbor Hotel, 110 South Eutaw Street, Baltimore, Maryland. The meeting will begin at 8:30 am and conclude at 5:30 pm each day. The meeting is open to the public, but seating will be limited.

The purpose of this meeting is to identify and discuss challenges faced by small water systems in complying with the Safe Drinking Water Act , as amended in 1996. The meeting is open to the public to observe. The working group members are meeting to gather information, analyze relevant issues and facts and discuss options. Statements will be taken from the public at this meeting, as time allows.

For more information, please contact, Peter E. Shanaghan, Designated Federal Officer, Small Systems Implementation Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4606), 401 M Street SW, Washington, D.C. 20460. The telephone number is 202–260–5813 and the email address is shanaghan.peter@epamail.epa.gov.

Dated: February 8, 1999.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 99–4155 Filed 2–18–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

Oxygenate Use in Gasoline

[FRL–6304–5]

AGENCY: Environmental Protection Agency.

ACTION: Notice of oxygenate use in gasoline panel meeting.

SUMMARY: On November 30, 1998, U.S. Environmental Protection Agency Administrator Carol M. Browner announced the creation of a blue-ribbon panel of leading experts from the public health and scientific communities, automotive fuels industry, water utilities, and local and State government to review the important issues posed by the use of MTBE and other oxygenates in gasoline. EPA created the panel to gain a better understanding of the public health concerns raised by the discovery of MTBE in some water supplies. The panel will be chaired by Mr. Daniel Greenbaum, President of the Health Effects Institute (HEI) of Cambridge, Massachusetts, and Mr. Robert Perciasepe, Assistant Administrator for Air and Radiation, US EPA.

This notice announces the time and place for the second meeting of the panel.

DATES: The blue-ribbon panel reviewing the use of oxygenates in gasoline will conduct its second meeting on Monday and Tuesday, March 1 and 2, 1999, in Boston, MA beginning at 1:00 p.m.

ADDRESSES: The meeting will be held from 1:00–6:00 p.m. on Monday, March 1st and from 8:30 a.m.–3:30 p.m. on Tuesday, March 2nd at the Hyatt Regency Harborside, Boston Logan International Airport, 101 Harborside Dr., Boston, MA.

FOR FURTHER INFORMATION CONTACT: Karen Smith at U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, D.C. 20460, (202) 564–9674, or John Brophy at (202) 564–9068. Information can also be found at www.epa.gov/oms/consumer/fuels/oxypanel/blueribb.htm

SUPPLEMENTARY INFORMATION: This is the second in a series of meetings at locations around the country to hear from regional and national experts on the facts concerning oxygenate use in fuel. In addition to invited presentations, the panel has set aside time for public comment on Tuesday, March 2nd. A sign-up sheet will be available at the registration table the morning of the meeting and any person desiring to make a brief statement should sign-up by 10:00 a.m. or call Karen Smith at (202) 564–9674. These statements will be scheduled on a first come, first serve basis and may be limited in length to allow for participation by all parties. The panel will also be accepting written submissions. Written submissions can be mailed to US EPA, 401 M Street, SW, Mail Code 6406J (Attn: Blue-Ribbon Panel), Washington, DC 20460.

Dated: February 11, 1999.

Margo T. Oge,

Director, Office of Mobile Sources.

[FR Doc. 99–4156 Filed 2–18–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[PF–858; FRL–6057–3]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the amendment of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by the docket control number PF–858, must be received on or before March 22, 1999.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, c/o PM 90, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th floor CS1 2800 Crystal Drive, Arlington, VA. (703–308–8097, e-mail: bacchus.shanaz@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received an amendment to a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice, as well as the public version, has been established for this notice under docket control number [PF–858] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ADDRESSES at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII File avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–858]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Dated: February 9, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summaries of Petition

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and

represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Amended Petition

EPA has received a request from the Interregional Research Project Number 4 (IR–4), New Jersey Agricultural Experiment Station, Technology Center of New Jersey, Rutgers University, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a, to amend 40 CFR part 180 by extending the exemption from the requirement of a temporary tolerance for residues of the microbial pesticide *Aspergillus flavus* (*A. Flavus*) AF36 in or on the raw agricultural commodity cotton until December 30, 2001. The request for an extension of the exemption from temporary tolerance was submitted on behalf of the Southern Regional Research Center, United States Department of Agriculture, Agricultural Research Service, 1100 Robert E. Lee Blvd., New Orleans, LA 70179–0687. These extensions are requested to comply with the Food Quality Protection Act of 1996 and to extend the use of the biopesticide to a larger area. Concomitant with this notice of filing, EPA is issuing a notice of receipt of application for extension (amendment) of the Experimental use Permit 69224–EUP–1. According to the proposed amended application for an Experimental Use Permit 69224–EUP–1, 200,000 pounds (90,719 kg) of the microbial pesticide are to be applied to a total of 20,000 acres of commercial cotton fields in 5 of the 15 counties in Arizona. The proposed applications are to be made in Yuma, LaPaz, Maricopa, Mohave and Pinal Counties.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act, the Southern Regional Research Center, United States Department of Agriculture, Agricultural Research Service prepared a summary of the petition and authorization for the summary to be published in the **Federal Register** in a notice of the receipt of the petition. The summary represents the views of the Southern Regional Research Center, United States Department of Agriculture, Agricultural Research Service; EPA, as mentioned above, is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

A. Proposed Use Practices

Aspergillus flavus isolate AF36 is for application to cotton to reduce the incidence of aflatoxin producing strains of *A. flavus* and thereby reduce aflatoxin contamination of cottonseed. When applied just prior to flowering, *A. flavus* isolate AF36, which does not produce aflatoxin, competitively excludes aflatoxin producing *A. flavus* strains without increasing *A. flavus* in the environment in the long term. Sterile wheat seed colonized with *A. flavus* strain AF36 is applied at 10 pounds per acre.

B. Product Identity/Chemistry

1. The pesticide and corresponding residues are identified as *A. flavus* isolate AF36.

2. *Aspergillus flavus* isolate AF36 is a naturally occurring fungus isolated from cottonseed produced in the Yuma Valley of Arizona. AF36 has been shown to be naturally and consistently associated with commercial cotton grown in Arizona. The overall quantity of *A. flavus* at time of harvest on cottonseed grown in fields where AF36 has been applied (i.e. colony forming units per gram of seed) has been shown to be similar to levels on cottonseed grown in fields where no application was made. *A. flavus* is a widespread fungus. It is particularly well adapted to the hot desert regions of Arizona where it is widespread in the environment. The communities of *A. flavus* in the desert and in agricultural fields are naturally composed of both aflatoxin producing (toxigenic) and aflatoxin non-producing (atoxigenic) strains. Both atoxigenic and toxigenic strains have been found on essentially all plant material and soils in the desert valleys of Arizona. The goal of applications is to increase the percent of *A. flavus* that is the AF36 strain and to decrease the percent of *A. flavus* that produces aflatoxins.

3. An extension of the exemption from the requirement of a tolerance for residues of the microbial pesticide *A. flavus* AF36 in/on cotton is being proposed. *A. flavus* isolate AF36, when applied to the soil just prior to bloom has been shown to significantly reduce the levels of aflatoxin in cottonseed at harvest. Aflatoxin levels in cottonseed products are regulated by the Food and Drug Administration (FDA). FDA does not allow cottonseed products containing aflatoxin at 20 parts per billion (ppb) or higher to be used in dairy rations. FDA regulations also do not allow cottonseed products containing aflatoxin above 300 ppb to be used for feeding beef cattle. All lots of the active ingredient (*A. flavus* isolate AF36) and the formulated product are monitored as part of a rigorous quality control program.Starter cultures of *A. flavus* isolate AF36 used in the production of the end-use product are always screened for aflatoxin production using TLC and appropriate standards. Quality control standards are zero tolerance for aflatoxin production in starter cultures. *A. flavus* AF36 has never been found to produce aflatoxin. Starter cultures of *A. flavus* AF36 as well as end-use products containing this active ingredient are also identified to isolate by vegetative compatibility analysis. Quality control standards are zero tolerance for *A. flavus* not identified as *A. flavus* isolate AF36 in the starter cultures and in the formulated product.

C. Mammalian Toxicological Profile

An acute oral toxicity test was performed whereby a single oral dose of 5,000 milligrams/kilogram (mg/kg) per animal of *A. flavus* isolate AF36 colonized wheat seed was administered by gavage to five male and five female Sprague Dawley rats. The oral LD_{50} of *A. flavus* AF36 was determined to be greater than 5,000 mg/kg rat body weight. No clinical signs were observed during the 14 day study and no abnormalities or adverse effects were observed in any of the rats upon necropsy.

Genotoxicity, reproductive and developmental toxicity, subchronic toxicity and chronic toxicity testing were not performed on this microbial pest control agent. This testing is not warranted, since: (1) *A. flavus* AF36 has been worked with at the Southern Regional Research Center for over 10 years and in commercial fields (1996 to 1998) and in hand picked field plots (1989 to 1994) without report of any adverse health effects; (2) *A. flavus* AF36 is widely distributed in the environment and its occurrence is natural; and (3) the label will require applicators and other handlers to wear waterproof gloves, a dust/mist filtering respirator with the appropriate NIOSH

approval prefix N–95, P–95, or R–95, coveralls, long sleeved shirt and long pants, and shoes plus socks so exposure should not be a problem.

D. Aggregate Exposure

1. *Dietary Exposure. Aspergillus flavus* isolate AF36 is a naturally occurring organism, which does not produce aflatoxin and is thus safer than the *A. flavus* isolates that produce aflatoxin. Proposed uses and application rates will not result in increases in the total population of *A. flavus* on the mature crop beyond naturally occurring background levels.

2. *Food.* FDA does not allow cottonseed products containing aflatoxin at 20 ppb or higher to be used in dairy rations. FDA regulations also do not allow cottonseed products above 300 ppb to be used for feeding beef cattle. *A. flavus* isolate AF36, when applied to the soil just prior to bloom, has been shown to significantly reduce the levels of aflatoxin in cottonseed at harvest. Furthermore, the proposed use and application rate will not increase exposure of humans to *A. flavus* by dietary means. There is minimal dietary exposure to *A. flavus* from cottonseed. There is no mechanism for *A. flavus* to be transferred from the seed to cow products and there is no evidence that the fungus readily contaminates meats or milk. Seed is typically extracted for oil with hexane and that process kills the fungus. Furthermore, applications of *A. flavus* AF36 do not increase the indigenous populations of *A. flavus* associated with the harvested crop. The applications merely alter the composition of the fungal community associated with the mature crop so that aflatoxin producing strains are far less frequent. The result is a much lower incidence of aflatoxins in the crop and in the environment associated with the developing and mature crop.

3. *Drinking Water. Aspergillus flavus* isolate AF36 is a naturally occurring organism that is already widespread in the environment and is not considered to be a risk to drinking water. Both percolation through soil and municipal treatment of drinking water would reduce the possibility of exposure of *A. flavus* through the drinking water. Applications of *A. flavus* AF36 do not increase the long-term populations of *A. flavus* in the environment, and thus are not expected to influence the relationship of *A. flavus* to water sources. Applications merely change the composition of the *A. flavus* community so that aflatoxins are less common in the environment.

4. *Non-dietary exposure.* The potential for non-occupational, non-dietary exposure to the general population is not expected to be significant and is not expected to present any risk of adverse health effects.

E. Cumulative Exposure

There are no other registered products containing *A. flavus* isolate AF36 or any other isolates (strains) of the microbial active ingredient. Data submitted show that the fungal metabolite of concern which is aflatoxin is not produced by *A. flavus* isolate AF36 in the crop or in artificial media in the lab. When applied prior to flowering, *A. flavus* isolate AF36 has been shown to exclude aflatoxin producing fungi competitively from the developing crop and to reduce aflatoxin contamination of cottonseed. Data show that the proposed use will not result in appreciable increases in the long-term population of *A. flavus* on the crop beyond naturally occurring levels. Furthermore, there is no expectation of cumulative effects with other pesticides.

F. Safety Considerations

Aspergillus flavus isolate AF36 is a naturally occurring organism. This isolate has low toxicity as demonstrated by the acute oral toxicity study in rats. *A. flavus* is ubiquitous throughout the hot desert valleys in Arizona. Studies have shown that treatment of cotton fields just prior to flowering with sterile wheat seed colonized by *A. flavus* isolate AF36 at 10 lbs. per acre does not increase the long-term populations of *A. flavus* either on the crop at maturity or in the soil 1 year after application. Based on this information, IR–4 is of the opinion that the aggregate exposure to *A. flavus* over a lifetime should not change with application of AF36, and exposure to both aflatoxin producing *A. flavus* strains and aflatoxin should decrease. This should be beneficial to human health. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to *A. flavus* isolate AF36. Extending the exemption of *A. flavus* isolate AF36 from the requirement of a temporary tolerance should be considered safe and pose insignificant risk.

G. Existing Tolerances

A temporary tolerance exemption on cotton in conjunction with an Experimental Use Permit for *A. flavus* isolate AF36 is currently in effect (61 FR 30235–30236, June 14, 1996).

[FR Doc. 99–4158 Filed 2–18–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6234–4]

Proposed CERCLA Prospective Purchaser Agreement for the Schafer Manufacturing/Hawkens Furniture Site

AGENCY: U.S. Environmental Protection Agency (''U.S. EPA'').

ACTION: Proposal of CERCLA prospective purchaser agreement for the Schafer Manufacturing/Hawkens Furniture site.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''SARA''), Public Law 99–499, notice is hereby given that a proposed prospective purchaser agreement (''PPA'') for the Schafer Manufacturing/Hawkens Furniture Site (''the Site'') located in Union City, Michigan, has been executed by the Village of Union City. The proposed PPA has been submitted to the Attorney General for approval. The proposed PPA would resolve certain potential claims of the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against the Village of Union City. The proposed PPA would require the Village of Union City to pay the United States $2,000 to be applied toward outstanding response costs incurred by the United States in conducting federally funded removal activities at the Site. The Site is not on the NPL, and no further response activities at the Site are anticipated at this time.

DATES: Comments on the proposed PPA must be received by March 22, 1999.

ADDRESSES: A copy of the proposed PPA is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Terry Branigan at (312) 353–4737, prior to visiting the Region 5 office. Comments on the proposed PPA should be addressed to Terry Branigan, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Terry Branigan at (312) 353–4737, of the U.S. EPA Region 5 Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this document, is open for comments on the proposed

PPA. Comments should be sent to the addressee identified in this document.

Wendy L. Carney,

Acting Director, Superfund Division, Region 5.

[FR Doc. 99–4157 Filed 2–18–99; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–266; Report No. AUC–99–23–B (Auction No. 23)]

Auction of Local Multipoint Distribution Service Spectrum; Auction Notice and Filing Requirements for 168 Local Multipoint Distribution Service Licenses Scheduled for April 27, 1999; Minimum Opening Bids and Other Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On January 29, 1999, the Wireless Telecommunications Bureau (''Bureau'') released a Public Notice announcing the minimum opening bids and other auction procedures for the auction of Local Multipoint Distribution Service (''LMDS'') spectrum, consisting of 168 licenses.

DATES: The LMDS auction will begin on April 27, 1998.

ADDRESSES: See text of the Public Notice and related attachments for information regarding important addresses.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Kathryn Garland, Operations at (717) 338–2801; Tim Salmon, Auctions Analysis; and Arthur Lechtman, Legal Branch at (202) 418–0660. Public Safety and Private Wireless Division: Ronald Quirk or Cathy Fox at (202) 418–0680. Media Contact: Meribeth McCarrick at (202) 418–0654.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice that was released on January 29, 1999. The complete text of this Public Notice is available in its entirety, including all Attachments, for inspection and copying during normal business hours in the Wireless Telecommunications Bureau Reference Center, Room 5608, 2025 M Street N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, fax (202) 857–3805, 1231 20th Street, N.W., Washington, D.C. 20036. It is also available on the Commission's website at http://www.fcc.gov.

Synopsis of the Public Notice:

A. Introduction

1. This Public Notice announces the procedures and minimum opening bids for the upcoming Local Multipoint Distribution Service (''LMDS'') auction. On November 6, 1998, the Wireless Telecommunications Bureau (''Bureau'') released a Public Notice (*See* ''Local Multipoint Distribution Service Spectrum Re-Auction of 168 Licenses Scheduled for April 27, 1999; Application Deadline Set for March 29, 1999; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures,'' *Public Notice*, DA 98–2266 (rel. November 6, 1998) (''*LMDS Public Notice*''), 63 FR 64502–01 (November 20, 1998), seeking comment on the establishment of reserve prices or minimum opening bids for the LMDS auction, in accordance with the Balanced Budget Act of 1997. In addition, the Bureau sought comment on a number of procedures to be used in the LMDS auction. The Bureau received two comments and no replies in response to the *LMDS Public Notice*. Comments were filed on November 30, 1998, by the Wireless Communications Association International, Inc. (''WCA'') and by ABS LMDS Venture, Catfish Communications, L.L.C., ENMR Telephone Cooperative, Inc., and SKSW LMDS Venture, filing jointly (collectively ''ABS et al'').

2. The licenses available in this auction are licenses for which there was no winning bidder in the original LMDS auction that closed on March 25, 1998, or are licenses on which the winning bidder defaulted. The three licensees in default include Baker Creek Communications, L.P., New Wave Networks, L.L.C., and Pinpoint Communications, Inc. Licenses B038–B, B144–B, B254–B, B371–B, B372–B, and B392–B are the subject of a pending waiver request filed by New Wave Networks, L.L.C. (*See* New Wave Networks, L.L.C, Request for Waiver of Rule Sections 101.1105(b) and 1.2109(a)–(c), filed August 13, 1998; Supplement filed September 2, 1998; Second Supplement filed September 9, 1998; Third Supplement filed December 9, 1998.) Licenses B185–B, B270–A, and B270–B are the subject of a pending Petition for Reconsideration filed by Pinpoint Communications, Inc. (*See* Pinpoint Communications, Application for Local Multipoint Distribution Service Licenses to Serve BTA 185, Hastings, Nebraska and BTA 270, McCook, Nebraska, Petition for Reconsideration, filed October 23, 1998.) Two blocks of spectrum are allocated for LMDS systems:

(1) Block A (1,150 MHz): 27,500–28,350 MHz and 29,100–29,250 MHz and 31,075 –31,225 MHz

(2) Block B (150 MHz): 31,000–31,075 MHz and 31,225–31,300 MHz

One license will be awarded for each of these spectrum blocks in each of 122 Block A Basic Trading Areas (BTAs) and 46 Block B BTAs designated for LMDS. Rand McNally is the copyright owner of the Major Trading Area (MTA) and Basic Trading Area (BTA) Listings, which list the BTAs contained in each MTA and the counties within each BTA, as embodied in Rand McNally's Trading Area System MTA/BTA Diskette, and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide. The conditional use of Rand McNally copyrighted material by interested persons is authorized under a blanket license agreement dated February 10, 1994, and covers use by LMDS applicants. This agreement requires authorized users of the material to include a legend on reproductions (as specified in the license agreement) indicating Rand McNally ownership. These licenses are listed in Attachment A to this Public Notice. The BTA licenses designated for the LMDS auction comprise various portions of the following areas: (1) continental United States and (2) Puerto Rico. Thus, there are a total of 168 LMDS licenses to be auctioned.

3. Auction Date: The auction will begin on April 27, 1999. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on all licenses.

4. Auction Title: The Local Multipoint Distribution Service—Auction No. 23.

5. Bidding Methodology: Simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

6. Pre-Auction Deadlines:

- Auction Seminar—March 10, 1999.
- Short Form Application (FCC Form 175)—March 29, 1999; 5:30 p.m.ET.
- Upfront Payments (via wire transfer)—April 12, 1999; 6:00 p.m. ET.
- Orders for Remote Bidding Software— April 13, 1999; 5:30 p.m. ET.
- Mock Auction April 22, 1999.

7. Telephone Contacts:

- Auctions Hotline—(888) CALL–FCC ((888) 225–5322), press Option #2 or (717) 338–2888 (direct dial).

(*For Bidder Information Packages, General Auction Information, and Seminar Registration. Hours of service: 8 a.m.–5:30 p.m. ET.*)

• FCC Technical Support Hotline—(202) 414–1250 (voice), (202) 414–1255 (TTY).

(*For technical assistance with installing or using FCC software. Hours of service: 8 a.m.–6 p.m. ET, Monday–Friday; 9 a.m.–5 p.m. ET, weekend of March 27–28.*)

8. List of Attachments:

• Attachment A—Summary of LMDS Licenses to be Auctioned, Upfront Payments, Minimum Opening Bids.

• Attachment B—Guidelines for Completion of FCC Forms 175 and 159, and Exhibits.

• Attachment C—Electronic Filing and Review of FCC Form 175.

• Attachment D—Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules.

• Attachment E—Existing 28 GHz Licensee and 31 GHz Licensee.

• Attachment F—Location of NGSO–MSS Feeder Link Earth Stations in the 29.1–29.25 GHz Band.

• Attachment G—Auction Seminar Registration Form.

• Attachment H—Exponential Smoothing Formula and Example.

9. Background: In 1997, the Commission established rules to create and govern the licensing and operations for Local Multipoint Distribution Service (LMDS), a fixed, broadband, point-to-multipoint microwave service. The technology developed for use in the LMDS frequency band provides very high subscriber capacity for two-way video telecommunications. The Commission also established rules for the distribution of LMDS licenses by means of competitive bidding. The initial auction for LMDS licenses began on February 18, 1998 and closed on March 25, 1998, with 104 bidders winning 864 of the 986 available licenses.

10. Incumbent Licensees: Although LMDS operations are permitted in the 31,000–31,075 MHz and 31,225–31,300 MHz bands, incumbent city licensees and private business users operating in these two segments are entitled to protection against harmful interference from any LMDS operation in these blocks. LMDS service providers will be entitled to interference protection from any other presently-authorized primary users in the 31,075–31,225 MHz bands. More detailed information is provided in Attachment E.

11. Block A of the New York BTA is encumbered by a pre-existing licensee in the New York Primary Metropolitan Statistical Area. The incumbent licensee, Winstar Wireless Fiber Corp., is entitled to interference protection. *See* Attachment E.

12. Reminder to potential Non-geostationary Mobile Satellite Service applicants/licensees: Section 101.103(h) of the Commission's Rules requires that no more than 15 days after the release of this Public Notice, NGSO–MSS feeder link earth station complex applicants/licensees planning to operate in the 29,100–29,250 MHz band pursuant to Section 25.257 of the rules, file with the Commission a set of geographical coordinates consistent with Rule Section 101.103(h)(2). This information should be directed to the attention of: Ronald Quirk, Federal Communications Commission, Wireless Telecommunications Bureau, 1919 M Street, NW, Room 8102, Washington, D.C. 20554.

13. Other Proceedings: Currently pending before the Bureau are several Petitions for Reconsideration in the matter of Requests for Waiver of Section 101.1003(a) of the Commission's Rules Establishing Eligibility Restrictions on Incumbent LECs and Cable Operators in the Local Multipoint Distribution Service. (*See Order*, 13 FCC Rcd 18694 (1998)).

14. Due Diligence: Potential bidders are reminded that several NGSO–MSS feeder link Earth stations are located in the 29.1–29.5 GHz band. These are identified in Attachment F.

15. Potential bidders should be aware that certain licenses designated for Auction No. 23 are subject to a waiver request and petition for reconsideration that are pending before the Commission. The Bureau notes that resolution of these matters could have an impact on the availability of licenses for this auction. In addition, while the Commission will continue to act on pending requests and petitions, some of these matters may not be resolved before the auction. In the event that changes in the license inventory for Auction Event No. 23 occur before the auction, the Commission will make an announcement by Public Notice.

16. Licensing information is contained in the Commission's licensing database, which is available for inspection in the Wireless Telecommunications Bureau's Public Reference Rooms, located at 2025 M Street, N.W., Room 5608, Washington, D.C. 20554, and 1270 Fairfield Road, Gettysburg, PA 17325. In a future public notice, the Bureau will provide the new location for inspecting the Commission's licensing database in the Portals building.

17. In addition, potential bidders may search for information regarding LMDS licensees on the World Wide Web at http://www.fcc.gov/wtb. In particular, information can be accessed by downloading databases by selecting ''WTB Database Files'' (which can be accessed at http://www.fcc.gov/wtb/databases.html), or searching on-line by selecting ''Search WTB Databases'' (http://gullfoss.fcc.gov:8080/cgi-bin/ws.exe/beta/genmen/index.hts). Any telephone inquiries regarding accessing this data should be directed to the Technical Support Hotline at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)).

18. The Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to physically inspect any sites located in or near the geographic area for which they plan to bid.

19. Participation: Those wishing to participate in the auction must:

• Submit a short form application (FCC Form 175) by March 29, 1999.

• Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by April 12, 1999.

• Comply with all provisions outlined in this Public Notice.

20. Prohibition of Collusion: To ensure the competitiveness of the auction process, the Commission's Rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins with the filing of short-form applications, and ends on the down payment due date. Bidders competing for the same license(s) are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. The Bureau, however, cautions that merely filing a certifying statement as part of an

application will not outweigh specific evidence that collusive behavior has occurred nor will it preclude the initiation of an investigation when warranted. In the LMDS auction, for example, the rule would apply to any applicants bidding for the same BTA. Therefore, applicants that apply to bid for ''all markets'' would be precluded from communicating with all other applicants after filing the FCC Form 175. However, applicants may enter into bidding agreements *before* filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications. By signing their FCC Form 175 short form applications, applicants are certifying their compliance with Section 1.2105(c). In addition, Section 1.65 of the Commission's Rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

21. Bidder Information Package: No separate bidder information package will be published for this auction. However, some Commission Orders relevant to LMDS are contained in the Bidder Information Package for Auction Event No. 17, the first LMDS auction. Prospective bidders are advised not to rely upon information contained in the Bidder Information Package, other than the rulemaking Orders contained in Tab E, as it is outdated. In addition, the Commission and Bureau have released Orders concerning LMDS since the publication of the Bidder Information Package (*see* next section). The Commission has a limited number of Auction Event No. 17 Bidder Information Packages available. A copy may be requested by contacting the Auction Hotline at (888) CALL–FCC ((888) 225–5322) and pressing Option 2 at the prompt. An electronic version of the Auction Event No. 17 Bidder Information Package can be accessed via the Commission website at www.fcc.gov/wtb/auctions.

22. Relevant Authority: Prospective bidders must familiarize themselves thoroughly with the Commission's Rules relating to LMDS, contained in Title 47, Part 101 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in Title 47, Part 1 of the Code of Federal Regulations.

23. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, ''Terms'') contained in the *Second Report and Order* in PP Docket No. 93–253, 9 FCC Rcd 2348 (1994); the *Second Memorandum Opinion and Order* in PP Docket No. 93–253, 9 FCC Rcd 7245 (1994); the *Erratum to the Second Memorandum Opinion and Order* in PP Docket No. 93–253 (released Oct. 19, 1994); the *First Report and Order and Fourth Notice of Proposed Rule Making* in CC Docket No. 97–297, 11 FCC Rcd 19005 (1996); the *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making* in CC Docket No. 96–297, 12 FCC Rcd 12545 (1997) (''*LMDS Second R&O*''); the *Second Order on Reconsideration* in CC Docket No. 97–297, 12 FCC Rcd 15082 (1997); the *Third Order on Reconsideration* in CC Docket 97–297, 13 FCC Rcd 4856; the *Fourth Report and Order* in CC Docket No. 92–297, 13 FCC Rcd 11655 (1998); *Order,* Requests for Waiver of Section 101.1003(a) of the Commission's Rules Establishing Eligibility Restrictions on Incumbent LECs and Cable Operators in the Local Multipoint Distribution Service, 13 FCC Rcd 18694 (1998) (collectively referred to as the ''Relevant Orders''); and Part 1, Subpart Q of the Commission's Rules concerning Competitive Bidding Proceedings.

24. The terms contained in the Commission's Rules, relevant orders, public notices and bidder information package are not negotiable. The Commission may amend or supplement the information contained in our public notices or the bidder information package at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission Rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC World Wide Web site at http://www.fcc.gov/wtb/auctions. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 857–3800. When ordering documents from ITS, please provide the appropriate FCC number (*e.g.*, FCC 97–323 for the *Second Order on Reconsideration*).

25. Bidder Alerts: All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

26. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

27. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the LMDS auction to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a ''cold call'' from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of the minimum investment is less than $25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service (''IRS''), Federal Trade Commission (''FTC''), Securities and Exchange Commission (''SEC''), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

28. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific LMDS proposals may also call the FCC National Call Center at (888) CALL–FCC ((888) 225–5322).

B. Bidder Eligibility and Small Business Provisions

29. *General Eligibility Criteria.* As described above, this auction offers one license in each of 122 Block A Basic Trading Areas (BTAs) and 46 Block B BTAs designated for LMDS. For LMDS, the Commission adopted small business provisions to promote and facilitate the participation of small businesses in the LMDS auction and in the provision of this and other commercial mobile radio services. General eligibility to provide LMDS service, subject to certain restrictions outlined below, is afforded to entities that are not precluded under 47 CFR §§ 101.7, 101.1001, and 101.1003.

30. *Eligibility Restrictions: 1,150 megahertz licenses.* ILECs and cable television companies are subject to certain restrictions on their eligibility to own an attributable interest in the 1,150 megahertz LMDS license in their authorized or franchised service areas (''in-region''). An incumbent is defined as ''in-region'' if its authorized service area represents 10 percent or more of the population of the BTA. A 20 percent or greater ownership level constitutes an attributable interest in a license. ILECs and cable companies are permitted to participate fully in the auction of the 1,150 megahertz LMDS licenses, but are required to divest any overlapping interests within 90 days if they win a license at the auction. The eligibility restrictions terminate on the third anniversary of the effective date of the LMDS rules. These restrictions may be extended beyond the three-year period, if, upon a review at the end of this period, the Commission determines that sufficient competition has not developed. The Commission may waive the restriction in individual cases upon a showing of good cause.

31. *150 megahertz licenses.* All entities that meet the Commission's general eligibility criteria, including ILECs and cable television companies, are eligible to own attributable interests in the 150 megahertz license in any BTA.

32. *Determination of Revenues.* For purposes of determining which entities qualify as very small businesses, small businesses, or entrepreneurs, the Commission will consider the gross revenues of the applicant, its controlling principals, and the affiliates of the applicant. Therefore, the gross revenues of all of the above entities must be disclosed *separately and in the aggregate* as Exhibit C to an applicant's FCC Form 175. The Commission does not impose specific equity requirements on controlling principals. Once principals or entities with a controlling interest are determined, only the revenues of those principals or entities will be counted in determining small business eligibility. The term ''control'' includes both *de facto* and *de jure* control of the applicant. Typically, *de jure* control is evidenced by ownership of at least 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. The following are some common indicia of control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

33. *Entrepreneur or Very Small or Small Business Consortia.* A consortium of entrepreneurs, small businesses, or very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which *individually* satisfies the definition of entrepreneur or very small or small business in Section 101.1112(b), (c), or (d). Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling principals, and controlling principals' affiliates. The Bureau notes that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for very small or small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

34. *Application Showing.* Applicants should note that they will be required to file supporting documentation as Exhibit C to their FCC Form 175 short form applications to establish that they satisfy the eligibility requirements to qualify as an entrepreneur or a very small business or small business (or consortiums of entrepreneurs, very small, or small businesses) for this auction. Specifically, for the LMDS auction, applicants applying to bid as entrepreneurs, very small, or small businesses (or consortiums of entrepreneurs, very small, or small businesses) will be required to file as Exhibit C to their FCC Form 175 short form applications, all information required under Sections 1.2105(a) and Section 1.2112(a). In addition, these applicants must disclose, *separately and in the aggregate,* the gross revenues for the preceding three years of each of the following: (1) the applicant; (2) the applicant's affiliates; (3) the applicant's controlling principals; and (4) the affiliates of the applicant's controlling principals. Certification that the average gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, and its controlling principals, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of very small or small businesses, this information must be provided for each consortium member.

35. *Bidding Credits.* Applicants that qualify under the definitions of entrepreneur, very small business, and small business (or consortia of entrepreneurs, very small, or small businesses) (including calculation of average gross revenues) as are set forth in 47 CFR § 101.1112, are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. The size of an LMDS bidding credit depends on the average gross revenues for the preceding three years of the bidder and its controlling principals and affiliates:

- A bidder with average gross revenues of not more than $15 million for the preceding three years receives a 45 percent discount on its winning bids for LMDS licenses;
- A bidder with average gross revenues of more than $15 million but not more than $40 million for the preceding three years receives a 35 percent discount on its winning bids for LMDS licenses.
- A bidder with average gross revenues of more than $40 million but not more than $75 million for the preceding three years receives a 25 percent discount on its winning bids for LMDS licenses.

36. Bidding credits are not cumulative: qualifying applicants receive either the 25 percent, the 35

percent bidding credit, or the 45 percent bidding credit but not all three or any combination thereof.

37. LMDS bidders should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same level of bidding credit. Finally, LMDS bidders should also note that there are no installment payment plans in the LMDS auction.

C. Pre-Auction Procedures

38. *Short-Form Application (FCC Form 175)—Due March 29, 1999.* In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be received at the Commission by 5:30 p.m. ET on March 29, 1999. Late applications will not be accepted.

39. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* Paragraph 45 below.

40. *Electronic Filing.* Applicants must file their FCC Form 175 applications electronically. (*See* 47 CFR Section 1.2105(a).) Applications may generally be filed at any time from March 5, 1999 until 5:30 p.m. ET on March 29, 1999. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on March 29, 1999. Applicants must press the ''Submit Form 175'' button on the ''Submit'' page of the electronic form to successfully submit their FCC Forms 175. Information about installing and running the FCC Form 175 application software is included in Attachment C. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service are 8 a.m.–6 p.m. ET, Monday–Friday, and 9 a.m.–5 p.m. ET, the weekend of March 27–28, 1999.

41. *Completion of the FCC Form 175.* Applicants should carefully review 47 CFR § 1.2105, and must complete all items on the FCC Form 175 (and Form 175–S, if applicable). Instructions for completing the FCC Form 175 are in Attachment B of this Public Notice.

42. *Electronic Review of FCC Form 175.* The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications. There is a fee of $2.30 per minute for accessing this system. See Attachment C for details.

43. *Application Processing and Minor Corrections.* After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

44. As described more fully in the Commission's Rules, after the March 29, 1999, short form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change the certifying official or change control of the applicant). See 47 CFR Section 1.2105.

45. *Upfront Payments—Due April 12, 1999.* In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159. If filing the Form 159 manually, the July 1997 version must be used. Earlier versions of this form will not be accepted. All upfront payments must be received at Mellon Bank in Pittsburgh, PA, by 6:00 p.m. ET on April 12, 1999.

46. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 23 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the April 12, 1999 deadline will result in dismissal of the application and disqualification from participation in the auction.

47. *Making Auction Payments by Wire Transfer.* Wire transfer payments must be received by 6:00 p.m. ET on April 12, 1999. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/AC 910–0180
OBI Field: (Skip one space between each information item)
''AUCTIONPAY''
TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, block 26)
PAYMENT TYPE CODE (enter ''A23U'')
FCC CODE 1 (same as FCC Form 159, block 23A: ''23'')
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. # 358420

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

48. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event No. 23.'' Bidders may confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

49. *FCC Form 159.* Each upfront payment must be accompanied by a completed FCC Remittance Advice Form (FCC Form 159). Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment B to this Public Notice.

50. *Amount of Upfront Payment.* The Bureau adopts the proposed upfront payments for the LMDS auction. Specifically, the the upfront payments adopted for Auction Event No. 23 are:

(1) Block A: $0.06 * Pops (rounded up to the next dollar)
(2) Block B: $0.03 * Pops (rounded up to the next dollar)

The Bureau does not share WCA's concern that these upfront payments are too low, and thus invite defaults. The Bureau believes that the default payment rule is sufficient to deter high bidders from not meeting their payment obligations. The adopted upfront payment amounts have been calculated for each license and are listed in Attachment A. These amounts represent the deposits required to qualify to bid on the LMDS licenses in Auction No. 23. The Bureau finds that amounts

higher than these might serve as a barrier to participation in the auction, and that upfront payments lower than these might encourage frivolous auction participation and insincere bidding.

51. Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 23, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, *e.g.*, a $25,000 upfront payment provides the bidder with 25,000 bidding units. The total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses for which the applicant has selected on FCC Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

52. In order to be able to place a bid on a license, in addition to having specified that license on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

53. In calculating the upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. Bidders should check their calculations carefully as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

54. **Note:** An applicant may, on its FCC Form 175, apply for every license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

55. *Applicant's Wire Transfer Information for Purposes of Refunds.* Because experience with prior auctions has shown that in most cases wire transfers provide quicker and more efficient refunds than paper checks, the Commission will use wire transfers for all Auction No. 23 refunds. To avoid delays in processing refunds, applicants should include wire transfer instructions with any refund request they file; they may also provide this information in advance by faxing it to the FCC Billings and Collections Branch, ATTN: Linwood Jenkins or Geoffrey Idika, at (202) 418–2843. Please include the following information:

Name of Bank
ABA Number
Account Number to Credit
Correspondent Bank (if applicable)
ABA Number
Account Number
Contact and Phone Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Paragraph 114, *infra.*

56. *Auction Registration.* Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

57. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the applicant address listed in the FCC Form 175.

58. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, April 21, 1999 should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

59. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing in person at the FCC Auction Headquarters located at 2 Massachusetts Avenue, N.E., Washington, D.C. 20002. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes.

60. *Remote Electronic Bidding Software.* Qualified bidders are allowed to bid electronically or telephonically. Those choosing to bid electronically must purchase remote electronic bidding software for $175.00 by April 13, 1999. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 23.) A software order form is included in this public notice. If bidding telephonically, the appropriate phone number will be supplied in the second Federal Express mailing of confidential login codes.

61. *Auction Seminar.* On March 10, 1999, the FCC will sponsor a seminar for the LMDS auction at the Park Hyatt Washington Hotel, located at 1201 24th Street, N.W., Washington, D.C. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the LMDS service and auction rules. The seminar will also provide a unique opportunity for prospective bidders to ask questions of FCC staff.

62. To register, complete the registration form included with this Public Notice and submit it by March 8, 1999. Registrations are accepted on a first-come, first-served basis.

63. *Mock Auction.* All applicants whose FCC Form 175 and 175-S have been accepted for filing will be eligible to participate in a mock auction on April 22, 1999. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

D. Auction Event

64. The first round of the auction will begin on April 27, 1999. The initial round schedule will be announced in a Public Notice listing the qualified bidders, to be released approximately 10 days before the start of the auction.

65. *Auction Structure—Simultaneous Multiple Round Auction.* In the *LMDS Public Notice,* the Bureau proposed to award the 168 licenses in LMDS in a single, simultaneous multiple round auction. Neither commenter specifically addressed this issue, although WCA generally supported all proposals in the LMDS Public Notice. The Bureau concludes that the 168 LMDS licenses will be awarded through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, the Bureau believes, allows bidders to take advantage of any synergies that exist among licenses and is most administratively efficient.

66. *Maximum Eligibility and Activity Rules.* In the *LMDS Public Notice*, the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. The Commission received no comments on this issue.

67. For the LMDS auction the Bureau will adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction (as described under ''Auction Stages'' as set forth in Paragraph 74), prospective bidders are cautioned to calculate their upfront payments carefully.

68. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their maximum eligibility during each round of the auction.

69. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (see ''Minimum Accepted Bids'' in Paragraph 89, *infra*). A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions as set forth under ''Auction Stages'' in Paragraph 74 and ''Stage Transitions'' in Paragraph 76, *infra,* the Bureau adopts them for the LMDS auction.

70. *Activity Rule Waivers and Reducing Eligibility.* Based upon our experience in previous auctions, the Bureau adopts its proposal and each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

71. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any round where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

72. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in ''Auction Stages'' (*see* Paragraph 74 discussion below). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

73. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

74. *Auction Stages.* The Bureau concludes that the auction will be composed of three stages, which are each defined by an increasing activity rule. The Bureau will adopt its proposals for the activity rules. These are the same rules the Bureau will employ for the upcoming LMS auction. Below are the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9).

Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty-fortyninths (50/49).

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not reverify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding software's bidding module.

75. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, the Bureau adopts them for the LMDS auction.

76. *Stage Transitions.* In the *LMDS Public Notice*, the Bureau proposed that the auction would advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 10 percent for three consecutive rounds of bidding in each Stage. However, the Bureau further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, the Bureau proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Commission received no comments on this subject.

77. The Commission adopts its proposal. Thus, the auction will start in Stage One. Under the FCC's general guidelines it will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). However, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in the LMDS auction.

78. *Auction Stopping Rules.* The Bureau adopts its proposals concerning the stopping rule. Thus, bidding will remain open on all licenses until bidding stops on every license (a simultaneous stopping rule). The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. In addition, however, the Bureau retains the discretion to close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this stopping rule procedure. The Bureau will notify bidders in advance of implementing any change to our simultaneous stopping rule.

79. The Bureau retains the discretion, however, to keep an auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

80. Further, in its discretion, the Bureau reserves the right to declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the FCC invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The FCC intends to exercise this option only in extreme circumstances, such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the FCC is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity.

81. Adoption of these rules, the Bureau believes, is most appropriate for the LMDS auction because our experience in prior auctions demonstrates that the simultaneous stopping rule balanced the interests of administrative efficiency and maximum bidder participation. The substitutability between and among licenses in different geographic areas and the importance of preserving the ability of bidders to pursue backup strategies support the use of a simultaneous stopping rule.

82. *Auction Delay, Suspension, or Cancellation.* In the *LMDS Public Notice*, the Bureau proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. The Commission received no comments on this proposal.

83. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau will adopt its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

84. *Bidding Procedures—Round Structure.* The initial bidding schedule will be announced by public notice at least one week before the start of the auction, and will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results.

85. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

86. *Reserve Price or Minimum Opening Bid.* The Bureau will adopt the minimum opening bids proposed for each of the licenses in the LMDS auction, which are reducible at the discretion of the Bureau. Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest. Based on our experience in using minimum opening bids in the 800 MHz SMR, VHF Public Coast, and first LMDS auctions, the Bureau believes that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient assignment of licenses. Accordingly, the Bureau will use the following formulae for calculating minimum opening bids:

(1) Block A: $0.06 * Pops (rounded up to the next dollar)

(2) Block B: $0.03 * Pops (rounded up to the next dollar)

87. The Bureau concludes that the adopted formulae presented here best meet the objectives of our auction authority in establishing reasonable minimum opening bids. The Commission has noted in the past that the reserve price and minimum opening bid provision is not a requirement to maximize auction revenue but rather a protection against assigning licenses at unacceptably low prices and that we must balance the revenue raising objective against our other public

interest objectives in setting the minimum bid level. The Bureau further believes that when conducting second auctions for particular licenses, the public interest is best served by setting minimum opening bids that will maximize the likelihood that all licenses are distributed. The Bureau does not grant ABS *et al's* request to use the minimum opening bids from Auction Event No. 17 for their 13 licenses. The Bureau does not believe that their arguments are persuasive. Minimum opening bids cannot reflect the amount of the bid withdrawal payment for which a winning bidder may ultimately be liable. The Commission has never indicated that it would use the same minimum opening bids for subsequent auctions of any given licenses. Each auction event is unique and the Commission establishes minimum opening bids and other auction procedures that are most appropriate for the given circumstances. Using the original minimum opening bids for licenses that were subject to bid withdrawal is impractical. For the sake of auction integrity and fairness, minimum opening bids must be set in a manner that is consistent across licenses. The commenters' proposal, if implemented, could result in similar licenses having very different valuations at the start of the auction. ABS *et al* err in claiming that the value of the licenses they withdrew from is demonstrated by the second highest bid. If that were true, another bidder would have claimed the license. Furthermore, ABS *et al* recognize that minimum opening bids might have to be reduced during the course of the auction. This illustrates that they are aware of the potential for wide variations in withdrawal payments, and that is a risk all bidders assume when they withdraw bids.

88. Minimum opening bids are reducible at the discretion of the Bureau. This will allow the Bureau flexibility to adjust the minimum opening bids if circumstances warrant. The Bureau emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.,* before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum opening bid on specific licenses.

89. *Minimum Accepted Bids.* In the *LMDS Public Notice,* the Bureau proposed to use a smoothing methodology to calculate minimum bid increments. The Bureau further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate. The Commission received no comments on this particular issue.

90. Because these techniques have proven effective in prior auctions, the Bureau adopts its proposal for the LMDS auction. Once there is a standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. The formula used to calculate this increment is included as Attachment H. This methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. A similar methodology was used in previous auctions, including the original LMDS auction and the 220 MHz auction.

91. The Bureau adopts its proposal of initial values for the maximum of 0.2 or 20% of the license value, and a minimum of 0.1 or 10% of the license value. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate, such as raising the minimum increment toward the end of the auction to enable bids to reach their final values more quickly. The Bureau will do so by announcement in the Automated Auction System. Under its discretion the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. As an alternative approach, the Bureau may, in its discretion, adjust the minimum bid increment gradually over a number of rounds as opposed to single large changes in the minimum bid increment (*e.g.,* by raising the increment floor by one percent every round over the course of ten rounds). The Bureau also retains the discretion to use alternate methodologies for the LMDS auction if circumstances warrant.

92. *High Bids.* Each bid will be date- and time-stamped when it is entered into the FCC computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which bids are received by the Commission, starting with the earliest bid. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date-and time-stamp than bids submitted later in a round.

93. *Bidding.* During a bidding round, a bidder may submit bids for as many licenses as it wishes, subject to its eligibility, as well as withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date- and time-stamp of that bid reflects the latest time the bid was submitted.

94. Please note that all bidding will take place either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when handling bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid, by placing their calls well in advance of the close of a round, because four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 23.

95. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (1) the licenses applied for on FCC Form 175; and (2) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

96. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations *after* they submit their bids.

97. The bid entry screen of the Automated Auction System software for the LMDS auction allows bidders to place multiple increment bids which will let bidders increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license.

98. To place a bid on a license, the bidder must enter a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

Amount Bid = High Bid + (Bid Mult * Bid Increment)

Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter ''1'' in the bid increment multiplier column and press submit.

99. For any license on which the FCC is designated as the high bidder (*i.e.,* a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists for the licenses, and bidders should enter ''1'' in the Bid Mult field. Note that in this case, any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

100. *Bid Removal and Bid Withdrawal—Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the ''remove bid'' function in the software, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed. This procedure, about which the Commission received no comments, will enhance bidder flexibility and, the Bureau believes, may serve to expedite the course of the auction. Therefore, the Bureau will adopt these procedures for the LMDS auction.

101. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the ''withdraw bid'' function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g) and 1.2109. The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described in ''High Bids,'' Part 4.B.(4).

102. In previous auctions, the Bureau has detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Bureau continues to recognize the important role that bid withdrawals play in an auction, *i.e.,* reducing risk associated with efforts to secure various geographic area licenses in combination, the Bureau concludes that, for the LMDS auction, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so the Bureau believes it strikes a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auction, 800 MHz SMR auction, and first LMDS auction, and is in no way a reflection of our view regarding the likelihood of any speculation or ''gaming'' in this LMDS auction.

103. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g), and 1.2109. Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

104. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The FCC will serve as a ''place holder'' on the license until a new acceptable bid is submitted on that license.

105. *Calculation.* Generally, a bidder that withdraws a standing high bid during the course of an auction will be subject to a payment equal to the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid for that license. *See* 47 CFR Sections 1.2104(g), and 1.2109. No withdrawal payment will be assessed if the subsequent winning bid exceeds the withdrawn bid.

106. *Round Results.* The bids placed during a round are not published until the conclusion of that bidding period. After a round closes, the FCC will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

107. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 23 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

108. *Auction Announcements.* The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet and the FCC Bulletin Board System.

109. *Other Matters.* As noted above [FLAG], after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Filers must make these changes on-line, and submit a letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, N.W., Room 5202, Washington, D.C. 20554 (and mail a separate copy to Arthur Lechtman, Auctions and Industry Analysis Division), briefly summarizing the changes. Questions about other changes should be directed to Arthur Lechtman of the FCC Auctions and Industry Analysis Division at (202) 418–0660.

E. Post-Auction Procedures

110. *Down Payments and Withdrawn Bid Payments.* After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing withdrawn bid payments due.

111. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). *See* 47 CFR Section 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR § 1.2104(g), as discussed in ''Bid Removal and Bid Withdrawal,'' Paragraph 100. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

112. *Long-Form Application.* Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly

completed long-form application and required exhibits for each LMDS license won through the auction. Winning bidders that are small businesses or very small businesses must include an exhibit demonstrating their eligibility for bidding credits. *See* 47 CFR Section 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

113. *Default and Disqualification.* Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR § 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidders (in descending order) at their final bids. *See* 47 CFR Section 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

114. *Refund of Remaining Upfront Payment Balance.* All applicants that submitted upfront payments but were not winning bidders for a LMDS license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

115. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request which includes wire transfer instructions, a Taxpayer Identification Number (''TIN''), and a copy of their bidding eligibility screen print, to: Federal Communications Commission, Billings and Collections Branch, Attn: Regina Dorsey or Linwood Jenkins, 445 12th Street, S.W., Room 1–A824, Washington, D.C. 20554.

116. Bidders can also fax their request to the Billings and Collections Branch at (202) 418–2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Linwood Jenkins or Geoffrey Idika at (202) 418–1995.

Federal Communications Commission.

Mark R. Bollinger,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 99–4053 Filed 2–18–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Petition for Reconsideration and Application for Review of Action in Rulemaking Proceedings; Correction

AGENCY: Federal Communications Commission.

ACTION: Notice; correction.

SUMMARY: This document corrects the notice dated February 3, 1999, Report No. 2313. This notice was published in the **Federal Register** on February 9, 1999, (64 FR 6360) regarding Biennial Regulatory Review, Wireless Telecommunications Services. This notice clarifies that there were 13 petitions filed instead of eight.

FOR FURTHER INFORMATION CONTACT: Carolyn Bryant, Office of Public Affairs at 202–418–0295

Dated: February 12, 1999.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–4121 Filed 2–18–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Deposit Broker Status Survey.''

DATES: Comments must be submitted on or before April 20, 1999.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. All comments should refer to ''Deposit Broker Status Survey.'' Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

Title: Deposit Broker Status Survey.

OMB Number: New collection.

Frequency of Response: Occasional.

Affected Public: Deposit brokers who have notified the FDIC of their activity.

Estimated Number of Respondents: 1,200.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden: 200 hours.

General Description of Collection: The Deposit Broker Status Survey is targeted to deposit brokers who have notified the FDIC of their activity: securities and investment firms, financial institutions, financial planners, insurance agents, etc. The survey is designed to update FDIC records to ensure that brokers are active in the field, purge files of brokers no longer operating, update information on the activities of active brokers and correct addresses and contact information.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of

the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 12th day of February, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–4056 Filed 2–18–99; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of Certain Receiverships by the FDIC in First and Second Quarters of 1999

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: Notice is hereby given that the FDIC, for itself or as successor in interest to the Resolution Trust Corporation, in its capacity as Receiver for the Institutions set forth below (the ''Receiver'') intends to terminate these receiverships during the first and second calendar quarters of 1999.

FOR FURTHER INFORMATION CONTACT: Division of Resolutions and Receiverships, Terminations Section, 1–800–568–9161.

SUPPLEMENTARY INFORMATION:

Financial institution name	Receiver-ship No.	City	State
Pioneer Federal Savings and Loan Association	1251	Prairie Village	KS
Park Bank	2536	St. Petersburg	FL
Union Bank & Trust of Dallas	2813	Dallas	TX
First American Bank and Trust	4137	North Palm Beach	FL
NBC Bank-Houston, N.A	4215	Houston	TX
Trinity National Bank	4290	Benbrook	TX
Jackson Exchange Bank & Trust Company	4487	Jackson	MO
Westheimer National Bank	4586	Houston	TX
The Wolfe City National Bank in Wolfe City	4593	Wolfe City	TX
The Northwest Bank	5923	Dallas	TX
MBank Abilene, N.A	5962	Abilene	TX
Habersham Federal Savings and Loan Association	6920	Cornelia	GA
BrightBanc Savings Association	6952	Dallas	TX
Meridian Savings Association	6962	Arlington	TX
Baltimore Federal Financial, F.S.B	6963	Baltimore	MD
Concordia Federal Bank for Savings	7031	Lansing	IL
Sun Savings and Loan Association, F.A	7123	Parker	CO
MeritBanc Savings Association	7173	Houston	TX
Security Federal Savings Association	7190	Richmond	VA
Sun State Savings and Loan Association, FSA	7240	Scottsdale	AZ
Security Federal Savings Association	7250	Texarkana	TX
Capitol Federal Savings and Loan Association	7348	Aurora	CO
Pacific Coast Federal Savings Association of America	7356	San Francisco	CA
Sunrise Savings and Loan Association, a Federal Savings & Loan Association	7543	Boynton Beach	FL
Guaranty Federal Savings Bank, F.S.B	7546	Casper	WY
Investors Savings and Loan Association, a Federal Savings & Loan Association	7569	El Reno	OK
First Federal Savings and Loan Association of Raleigh	7756	Raleigh	NC
San Jacinto Savings Association	7789	Bellaire	TX
County Bank, a Federal Savings Bank	7818	Santa Barbara	CA
Southeastern Savings Bank, Inc	7842	Charlotte	NC
John Hanson Savings Bank, FSB	7844	Beltsville	MD
Statesman Bank for Savings, FSB	7858	Des Moines	IA
First Federal Savings and Loan Association of Toledo	7888	Toledo	OH
San Clemente Savings Bank, F.S.B	7932	San Clemente	CA
Palm Beach Federal Savings Bank	7983	Palm Beach Garden	FL
Pioneer Savings and Loan Association	7996	Prairie Village	KS
Imperial Savings Association	8206	San Diego	CA
Capitol Federal Savings and Loan Association of Denver	8207	Aurora	CO
Security Federal Savings and Loan Association of Richmond	8284	Richmond	VA
Pacific Coast Federal Savings Association of America	8830	San Francisco	CA
Sooner Federal Savings and Loan Association	8655	Tulsa	OK
Southwestern Savings and Loan Association	8663	El Paso	TX
Metropolitian Federal Bank, a Federal Savings Bank	8679	Nashville	TN
First Guaranty Bank for Savings	8821	Hattiesburg	MS
Pima Savings and Loan Association	8858	Tucson	AZ
American Pioneer Savings Bank	8886	Orlando	FL
Life Savings Bank	8896	Clearwater	FL

The liquidation of the assets of these receiverships is expected to be completed no later than June 30, 1999. To the extent permitted by available funds and in accordance with law, the Receiver for these institutions will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of such receiverships will serve no useful purpose. Consequently, notice is given that the receiverships will be terminated, as soon as practicable but no sooner than thirty (30) days after the date of this Notice.

If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Terminations Department, 1910 Pacific Avenue, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: February 12, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–4052 Filed 2–18–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, February 16, 1999, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, supervisory and administrative enforcement activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice of the meeting earlier than February 11, 1999, was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW, Washington, DC.

Dated: February 16, 1999.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 99–4236 Filed 2–16–99; 5:05 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, 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.: 203–011223–020.

Title: Transpacific Stabilization Agreement.

Parties:

American President Lines, Ltd. And APL Co. PTE Ltd. (Operating as a single carrier)
Evergreen Marine Corp. (Taiwan) Ltd.
Hanjin Shipping Co., Ltd.
Hapag-Lloyd Container Linie Gmbh
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Sea-Land Service, Inc.
Yangming Marine Transport Corp.

Synopsis: The proposed modification provides that any party may enter into individual service contracts in the agreement trade and authorizes any two or more parties to negotiate and enter into service contracts, to become effective on or after May 1, 1999, with one or more shippers. The modification would also authorize adoption of voluntary contracting guidelines.

Dated: February 16, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–4128 Filed 2–18–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 224–200686–003

Title: Lake Charles—Lake Charles Stevedores Agreement for Stevedore Services

Parties:

Lake Charles Harbor & Terminal District
Lake Charles Stevedores, Inc.

Synopsis: The proposed amendment extends the term of the agreement through February 1, 2000.

Agreement No.: 224–201069

Title: Alabama Core Marine Terminal Agreement

Parties:

Alabama State Docks Department
Core Industries, Inc.

Synopsis: The agreement is a permit which provides for cargo and freight handling services; it specifically excludes stevedoring services. The agreement runs through December 31, 2002.

Dated: February 16, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–4129 Filed 2–18–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Panalpina FMS, Inc., 1321 East Mercedes Drive, Hanover, MD 21076, Officers: Yohannes Woldemariam, President, Claus Plath, Vice President

Dated: February 16, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–4130 Filed 2–18–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 4, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Leitchfield Deposit Bancshares, Inc, ESOP, to retain additional voting shares of Leitchfield Deposit Bancshares, Inc., and thereby control Leitchfield Deposit Bank and Trust Company, all of Leitchfield, Kentucky.

Board of Governors of the Federal Reserve System, February 12, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–4083 Filed 2–18–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 15, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. First Capital Bank Holding Corporation, Fernandina Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Nassau County, Fernandina Beach, Florida (in organization).

2. Marine Bancshares, Inc., Naples, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Marine National Bank of Naples, Naples, Florida.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Archer, Inc., Palmer, Nebraska; and Osceola Insurance, Inc., Osceola, Nebraska; to acquire 10.25 percent of the voting shares of Pinnacle Bank, Papillion, Nebraska.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Greater Bay Bancorp, Palo Alto, California; to acquire 100 percent of the voting shares of Bay Area Bancshares, Redwood City, California, and thereby indirectly acquire Bay Area Bank, Redwood City, California.

Board of Governors of the Federal Reserve System, February 12, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–4082 Filed 2–18–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of December 22, 1998.

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on December 22, 1998.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that the economy has continued to expand at a brisk pace in recent months. Growth in nonfarm payroll employment was strong in November, after more moderate gains in September and October, and the civilian unemployment rate fell to 4.4 percent. Total industrial production declined somewhat in November, but manufacturing output was stable and up considerably from the third-quarter pace. Business inventory accumulation slowed appreciably in October after a sizable rise in the third quarter. The nominal deficit on U.S. trade in goods and services narrowed slightly in October from its third-quarter average. Total retail sales rose sharply in October and November, and housing starts were strong as well. Available indicators point to a considerable pickup in business capital spending after a lull in the third quarter. Trends in various measures of wages and prices have been mixed in recent months.

Most short-term interest rates have changed little on balance since the meeting on November 17, but longer-term rates have declined somewhat. Share prices in equity markets have remained volatile and have posted sizable gains on balance over the intermeeting period. In foreign exchange markets, the trade-weighted value of the dollar has declined slightly over the period in relation to other major

[1] Copies of the Minutes of the Federal Open Market Committee meeting of December 22, 1998, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

currencies and in terms of an index of the currencies of other countries that are important trading partners of the United States.

M2 and M3 have posted very large increases in recent months. For the year through November, both aggregates rose at rates well above the Committee's annual ranges. Total domestic nonfinancial debt has expanded in recent months at a pace somewhat above the middle of its range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee reaffirmed at its meeting on June 30-July 1 the ranges it had established in February for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1997 to the fourth quarter of 1998. The range for growth of total domestic nonfinancial debt was maintained at 3 to 7 percent for the year. For 1999, the Committee agreed on a tentative basis to set the same ranges for growth of the monetary aggregates and debt, measured from the fourth quarter of 1998 to the fourth quarter of 1999. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

To promote the Committee's long-run objectives of price stability and sustainable economic growth, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 4-3/4 percent. In view of the evidence currently available, the Committee believes that prospective developments are equally likely to warrant an increase or a decrease in the federal funds rate operating objective during the intermeeting period.

By order of the Federal Open Market Committee, February 10, 1999.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 99–4081 Filed 2–18–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:0 a.m., Wednesday, February 24, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: .

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 17, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–4238 Filed 2–17–99; 10:31 am]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Appointment of Members of the Medicare Payment Advisory Commission

AGENCY: General Accounting Office.

ACTION: Notice of schedule for appointing members and of expanded membership.

SUMMARY: The Comptroller General appoints the members of the Medicare Payment Advisory Commission to terms that begin on May 1 of the year of appointment and end on April 30 of the year in which each member's term expires. This notice announces that (1) appointments of members will be made public on or about March 15 of each year and (2) this year, seven appointments will be made. In order to carry out an amendment that expanded the Commission's membership from 15 to 17 and staggered the initial terms of the two added members, one appointment will be for a 1-year term and another for a 2-year term. The other five appointments, and subsequent appointments to fill vacancies created by the expiration of terms of current members, will be for 3-year terms.

ADDRESSES: The General Accounting Office is at 441 G St. NW., Washington, DC 20548. The Office of the Chairman of the Medicare Payment Advisory Commission is at Suite 800, 1730 K St., NW., Washington DC 20006.

FOR FURTHER INFORMATION CONTACT: General Accounting Office: Paul T. Wagner, 202–512–7257. Medicare Payment Advisory Commission: Murray N. Ross, 202–653–7220.

SUPPLEMENTARY INFORMATION: Section 1805 of the Social Security Act (as added by section 4022 of the Balanced Budget Act of 1997, Pub. L. 105–33, 111 Stat. 251, 350) established the Medicare Payment Advisory Commission, to be composed of 15 members appointed by the Comptroller General. Appointments were to be for 3 years, except that 5 of the first 15 members were to be appointed for 1 year, and 5 for 2 years, so that 5 members' terms would expire each year.

Section 5202 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681, recently expanded the membership of the Commission to 17. In order to stagger the terms of the two new members like those of the original members, sec. 5202 provides that one will be appointed for 1 year and the other for 2 years.

The terms of the two new members are to begin on May 1, 1999. This conforms to the appointment cycle for the other members, announced by us earlier (63 FR 40288, July 28, 1998): the terms of the original 15 members and their successors will expire on April 30 of the year in which each member's term ends. This year, the terms of five of the original members will expire on April 30.

To fill the five impending vacancies and to expand the Commission's membership from 15 to 17, we will appoint seven members this year to terms beginning on May 1. We will make a public announcement of the appointments on or about March 15. In accordance with the requirements for staggering the terms of the two new members, one will be appointed to a term expiring on April 30, 2000, and the other to a term expiring on April 30, 2001. Appointments to the seats of the five members whose terms are expiring this year will be for 3 years, expiring on April 30, 2002.

In the future, we will follow the same schedule: appointments to terms beginning on May 1 will be announced on or about March 15 of each year. Because the requirements for staggering initial terms will have been completed,

after this year all appointments to replace members whose terms have expired will be for 3 years.

David M. Walker,

Comptroller General of the United States.

[FR Doc. 99–4163 Filed 2–18–99; 8:45 am]

BILLING CODE 1610–02–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

Title and Description of Information Collection: Multi-site Evaluation of the Welfare-to-Work Grants Program—Baseline Forms—NEW—As required by the Balanced Budget Act of 1997, DHHS is planning a four-year project to evaluate the effectiveness of welfare-to-work initiatives undertaken through competitive and formula grants awarded by the US Department of Labor. DHHS' Office of the Assistant Secretary for Planning and Evaluation, in conjunction with DoL and the US Department of Housing and Urban Development (HUD), has designed an evaluation that will involve several rounds of data collection from grantees and grant program participants. The information collection instruments in this request for OMB approval consist of a sample intake form, a contact information form, and a study participation consent form to be used to gather baseline and administrative information on study participants. Respondents: Individuals, State and Local Governments, Businesses or Other For-profit Organizations, Not-for-profit Institutions; Burden Information for the Intake Form—Number of Respondents: 10,000; Number of Responses per Respondent: one; Average Burden per Response: 5 minutes; Total Burden for Intake Form: 830 hours—Burden Information for the Contact Information Form—Number of Respondents: 10,000; Number of Responses per Respondent: one; Average Burden per Response: 5 minutes: Total Burden for Contact Information Form: 830 hours—Burden Information for the Consent Form—Number of Respondents: 10,000; Number of Responses per Respondent: one; Average Burden per Response: 5 minutes: Total Burden for Consent Form: 830 hours. Total Burden: 2,490 hours. Total Annual Burden: 1,245 hours.

OMB Desk Officer: Allison Eydt

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: February 11, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–4028 Filed 2–18–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Publication of the Executive Summary of the Report, Research Involving Persons With Mental Disorders That May Affect Decisionmaking Capacity by the National Bioethics Advisory Commission (NBAC)

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The functions of NBAC are as follows:

(a) provide advice and make recommendations to the National Science and Technology Council and to other appropriate government entities regarding the following matters:

(1) the appropriateness of departmental, agency or other governmental programs, policies, assignments, missions, guidelines, and regulations as they relate to bioethical issues arising from research on human biology and behavior; and (2) applications, including the clinical applications, of that research.

(b) identify broad principles to govern the ethical conduct of research, citing specific projects only as illustrations for such principles.

(c) shall not be responsible for the review and approval of specific projects.

(d) in addition to responding to requests for advice and recommendations from the National Science and Technology Council, NBAC also may accept suggestions of issues for consideration from both the Congress and the public. NBAC may also identify other bioethical issues for the purpose of providing advice and recommendations, subject to the approval of the National Science and Technology Council. The members of NBAC are as follows:

Harold T. Shapiro, Ph.D., Chair
Patricia Backlar
Arturo Brito, M.D., Alexander M. Capron, LL.B.
Eric J. Cassell, M.D., M.A.C.P.
R. Alta Charo, J.D.
James F. Childress, Ph.D.
David R. Cox, M.D., Ph.D.
Rhetaugh G. Dumas, Ph.D., R.N.
Laurie M. Flynn
Carol W. Greider, Ph.D.
Steven H. Holtzman
Bernard Lo, M.D.
Lawrence H. Miike, M.D., J.D.
Thomas H. Murray, Ph.D.
Diane Scott-Jones, Ph.D.

Executive Summary, Research Involving Persons With Mental Disorders That May Affect Decisionmaking Capacity

In this report, the National Bioethics Advisory Commission (NBAC) considers how ethically acceptable research can be conducted with human subjects who suffer from mental disorders that may affect their decisionmaking capacity; whether, in this context, additional protections are needed; and, if so, what they should be and how they should be implemented. In addition, this report provides an opportunity for investigators, Institutional Review Board (IRB) members, persons with mental disorders and their families, and the general public to become better informed about the importance of such research and what we believe are the appropriate protections for the human subjects involved.

This report stands in a long line of statements, reports, and recommendations by governmental advisory groups and professional organizations on the ethical requirements of research involving human subjects that have been developed in the United States and elsewhere. Much has changed in the research environment since the National Commission for the Protection of Human Subjects of Biomedical and

Behavioral Research completed its work 20 years ago, and yet one finding is as true today as it was then: all research involving human beings as subjects must satisfy appropriate ethical and scientific standards. This moral imperative is especially acute for potentially vulnerable populations such as children, pregnant women, prisoners, or, NBAC believes, individuals with mental disorders that may affect their decisionmaking capacity. Mental disorders—which can be heartbreakingly burdensome for patients and their families and frustrating for the professionals who treat them—have in recent years been the focus of research studies that have produced important new methods of diagnosis and treatment. At the same time, some of these investigations have generated public controversy, government sanctions, and at times lawsuits. Although existing federal regulations for research involving human subjects provide special protections for certain populations that are regarded as particularly vulnerable, persons with mental disorders (who may have impaired capacity to make decisions about research participation) have not received any such special protections. NBAC believes that a cogent case can be made for requiring additional special protections in research involving as subjects persons with impaired decisionmaking capacity, but has chosen to focus this report on persons with mental disorders, in part because of this population's difficult history of involvement in medical research. Moreover, NBAC believes that in addition to the regulations that are already applicable, research involving subjects with mental disorders that may affect decisionmaking capacity should be governed by specific further regulations.

In its consideration of these issues over 18 months, NBAC received input through public comments provided at every meeting, expert testimony, commissioned papers, interactions with professional and patient groups, and a 45-day comment period during which interested parties could submit written comments on the final draft report. In addition, NBAC reviewed a sampling of research protocols and consent forms relevant to research on individuals whose decisionmaking capacity might be affected by mental illness. Based on these varied inputs and careful deliberations, NBAC came to the following conclusions:

- During the nearly two decades in which the current federal regulations for the protection of human subjects have been in place, important scientific research on the cause and treatment of mental disorders has continued and expanded. Further, NBAC believes that important opportunities to develop new therapies will continue to emerge, and that the research community may be on the verge of some momentous breakthroughs. NBAC's challenge, therefore, was to develop recommendations that would sustain the continued acquisition of new knowledge and the development of new therapies, while ensuring the protection of those who participate as subjects in such research.
- Although IRBs have considerable authority and discretion to review, approve, and monitor research involving persons with mental disorders, they have received little practical guidance for reviewing such protocols. However, more than additional guidance is needed. Because of significant gaps in the current federal regulation additional regulations are necessary at this time. NBAC believes that enhanced protections will promote broad-based support for further research by engendering greater public trust and confidence that subjects' rights and interests are fully respected.
- More research is being conducted than ever before, and the research environment has become far more complex, involving both a larger societal investment and a greater role for the private sector. NBAC shares what it believes to be a broad base of support for continuing efforts to more fully understand and treat mental disorders. NBAC recommends additional new protections with the deepest respect for the many people involved in research on these disorders: those with a disorder that may affect decisionmaking capacity, whose autonomy must be protected and, when possible, enhanced; the clinical investigators who are dedicated to the alleviation of these disorders; and informal caregivers, whose own lives are often absorbed by the tragedy that has befallen their loved ones. NBAC does not believe, however, that the additional protections recommended in this report will excessively burden research or hamper the development of effective new treatments. Moreover, it is useful to note that many share in the responsibility to protect the interests of those without whom this research could not be done—especially those who may be unable to give full informed consent and who may not themselves directly benefit from the research.

Overview of the Report

The report is divided into five chapters. Chapter 1 provides an overview of the issues that arise in research involving persons with mental disorders. It discusses the justification for the scope of the report, the nature of mental disorders, and the values that should guide research in these populations. Chapter 2 discusses informed consent and limitations on decisionmaking capacity. Chapter 3 examines the mechanisms that may be used to permit enrollment of persons who are now incapable of providing an informed consent: advance planning and surrogate decision making. It also considers the role of assent and objection. Chapter 4 explains NBAC's views on the assessment of risk and potential benefit in research. In particular, this chapter provides the rationale for distinguishing research protocols involving minimal risk, protocols involving greater than minimal risk that do not offer the prospect of direct medical benefit to the subjects, and protocols involving greater than minimal risk that do offer the prospect of direct medical benefit to the subjects. Chapter 5 presents NBAC's recommendations for regulatory reform and suggested additional guidance to IRBs and institutions.

The several recommendations for changes in federal regulations and for other governmental, institutional, and organizational actions are interconnected. Even though only a few recommendations are explicitly cross-referenced, it is important to view each recommendation in the context of the others. Only then is it possible to see exactly how NBAC proposes to protect human subjects with mental disorders that may affect decisionmaking capacity and also allow important research to proceed.

Recommendations

This report presents not only NBAC's recommendations but identifies where possible those who should be responsible for their implementation. Twenty-one recommendations are proposed. A number propose the development of new regulations for the protection of human subjects; others are directed to investigators and IRBs, state legislatures, the National Institutes of Health (NIH), the Department of Health and Human Services (DHHS), health professionals, federal agencies subject to the Federal Policy for the Protection of Human Subjects (''the Common Rule''), and others responsible for human subjects protection. These recommendations provide both a set of requirements that NBAC believes must be satisfied in all research protocols involving persons with mental disorders, and several additional or optional protections that may be

considered, as appropriate, in particular circumstances. Taken together, these recommendations would both enhance existing protections and facilitate broad public support for continued research on mental disorders.

Although NBAC proposes a number of recommendations that would require changes in the Common Rule, it is aware that the time frame for such reforms might be long and the process labor intensive. Many of the regulatory proposals made by NBAC could, therefore, be accomplished by the creation of a new subpart in 45 CFR 46. Regardless of which regulatory route is selected, NBAC encourages researchers and institutions to voluntarily adopt the spirit and substance of these recommendations immediately. The recommendations are clustered into six sections related to: review bodies; research design; informed consent and capacity; categories of research; surrogate decision making; and education, research, and support.

I. Recommendations Regarding Review Bodies

Institutional Review Board (IRB) Membership

Recommendation 1. All IRBs that regularly consider proposals involving persons with mental disorders should include at least two members who are familiar with the nature of these disorders and with the concerns of the population being studied. At least one of these IRB members should be a member of the population being studied, a family member of such a person, or a representative of an advocacy organization for this population. These IRB members should be present and voting when such protocols are discussed. IRBs that only occasionally consider such protocols should involve in their discussion two ad hoc consultants who are familiar with the nature of these disorders and with the concerns of the population being studied; at least one of these consultants should be a member of the population being studied, a family member of such a person, or a representative of an advocacy organization for this population.

Creation of a Special Standing Panel (SSP)

Recommendation 2. The Secretary of the Department of Health and Human Services should convene a Special Standing Panel (SSP) on research involving persons with mental disorders that may affect decisionmaking capacity. The panel's tasks should include:

(A) Reviewing individual protocols that cannot otherwise be approved under the recommendations described in this report, that have been forwarded by IRBs to the SSP for its consideration. If the SSP finds that a protocol offers the possibility of substantial benefit to the population under study, that its risks to subjects are reasonable in relation to this possible benefit, and that it could not be conducted without the proposed population, then the SSP may approve the protocol if it is satisfied that all appropriate safeguards are incorporated. Under no circumstance, however, should the SSP approve a protocol that reasonable, competent persons would decline to enter;

(B) Promulgating guidelines that would permit local IRBs to approve protocols that cannot otherwise be approved under the recommendations described in this report. Such guidelines could suggest that a particular class or category of research, using specified research interventions with certain identified populations, could be considered by local IRBs without the need to resort to the SSP for further approval. Under no circumstances, however, should the SSP promulgate guidelines permitting IRBs to approve research that would enroll subjects who lack decisionmaking capacity in protocols that reasonable, competent persons would decline to enter.

The SSP should have members who can represent the diverse interests of potential research subjects, the research community, and the public. The panel's protocol approvals and guidelines should all be published in an appropriate form that ensures reasonable notice to interested members of the public.

Those federal agencies that are signatories of the Common Rule should agree to use the SSP, and the SSP's effectiveness should be reviewed no later than 5 years after inception.

II. Recommendations Regarding Research Design

Appropriate Subject Selection

Recommendation 3. An IRB should not approve research protocols targeting persons with mental disorders as subjects when such research can be done with other subjects.

Justifying Research Design and Minimizing Risks

Recommendation 4. Investigators should provide IRBs with a thorough justification of the research design they will use, including a description of procedures designed to minimize risks to subjects. In studies that are designed to provoke symptoms, to withdraw subjects rapidly from therapies, to use placebo controls, or otherwise to expose subjects to risks that may be inappropriate, IRBs should exercise heightened scrutiny.

Evaluating Risks and Benefits

Recommendation 5. Investigators should provide IRBs with a thorough evaluation of the risks and potential benefits to the human subjects involved in the proposed protocol. The evaluation of risks includes the nature, probability, and magnitude of any harms or discomforts to the subjects. The evaluation of benefits should distinguish possible direct medical benefits to the subject from other types of benefits.

III. Recommendations Regarding Informed Consent and Capacity

Informed Consent To Research

Recommendation 6. No person who has the capacity for consent may be enrolled in a study without his or her informed consent. When potential subjects are capable of making informed decisions about participation, they may accept or decline participation without involvement of any third parties.

Objection to Participation in Research

Recommendation 7. Any potential or actual subject's objection to enrollment or to continued participation in a research protocol must be heeded in all circumstances. An investigator, acting with a level of care and sensitivity that will avoid the possibility or the appearance of coercion, may approach people who previously objected to ascertain whether they have changed their minds.

Assessing Potential Subjects' Capacity To Decide About Participating in a Research Protocol

Recommendation 8. For research protocols that present greater than minimal risk, an IRB should require that an independent, qualified professional assess the potential subject's capacity to consent. The protocol should describe who will conduct the assessment and the nature of the assessment. An IRB should permit investigators to use less formal procedures to assess potential subjects' capacity if there are good reasons for doing so.

Notifying Subjects of Incapacity Determinations and Research Enrollment

Recommendation 9. A person who has been determined to lack capacity to consent to participate in a research study must be notified of that

determination before permission may be sought from his or her legally authorized representative (LAR) to enroll that person in the study. If permission is given to enroll such a person in the study, the potential subject must then be notified. Should the person object to participating, this objection should be heeded.

IV. Recommendations Regarding Categories of Research

Research Protocols Involving Minimal Risk

Recommendation 10. An IRB may approve a protocol that presents only minimal risk, provided that:

(A) Consent has been waived by an IRB, pursuant to federal regulations; or

(B) The potential subject gives informed consent; or

(C) The potential subject has given Prospective Authorization, consistent with Recommendation 13, and the potential subject's LAR gives permission, consistent with Recommendation 14; or

(D) The potential subject's LAR gives permission, consistent with Recommendation 14.

Research Protocols Involving Greater Than Minimal Risk That Offer the Prospect of Direct Medical Benefit to Subjects

Recommendation 11. An IRB may approve a protocol that presents greater than minimal risk but offers the prospect of direct medical benefit to the subject, provided that:

(A) The potential subject gives informed consent; or

(B) The potential subject has given Prospective Authorization, consistent with Recommendation 13, and the potential subject's LAR gives permission, consistent with Recommendation 14; or

(C) The potential subject's LAR gives permission, consistent with Recommendation 14.

The research must also comply with Recommendations 7, 8, and 9.

Research Protocols Involving Greater Than Minimal Risk Research That Do Not Offer the Prospect of Direct Medical Benefit to Subjects

Recommendation 12. An IRB may approve a protocol that presents greater than minimal risk but does not offer the prospect of direct medical benefit to the subject, provided that:

(A) The potential subject gives informed consent; or

(B) The potential subject has given Prospective Authorization, consistent with Recommendation 13, and the potential subject's LAR gives permission, consistent with Recommendation 14; or

(C) The protocol is approved on the condition of its approval by the panel described in Recommendation 2, or falls within the guidelines developed by the panel, and the potential subject's LAR gives permission, consistent with Recommendation 14.

The research must also comply with Recommendations 7, 8, and 9.

V. Recommendations Regarding Surrogate Decision Making

Prospective Authorization

Recommendation 13. A person who has the capacity to make decisions about participation in research may give Prospective Authorization to a particular class of research if its risks, potential direct and indirect benefits, and other pertinent conditions have been explained. Based on the Prospective Authorization, an LAR may enroll the subject after the subject has lost the capacity to make decisions, provided the LAR is available to monitor the subject's recruitment, participation, and withdrawal. The greater the risks posed by the research protocol under consideration, the more specific the subject's Prospective Authorization should be to entitle the LAR to permit enrollment.

Legally Authorized Representatives (LARs)

Recommendation 14. A LAR may give permission (within the limits set by the other recommendations) to enroll in a research protocol a person who lacks the capacity to decide whether to participate, provided that:

(A) The LAR bases decisions about participation upon a best estimation of what the subject would have chosen if capable of making a decision; and

(B) The LAR is available to monitor the subject's recruitment, participation, and withdrawal from the study; and

(C) the LAR is a person chosen by the subject, or is a relative or friend of the subject. Expansion of the Category of Legally Authorized Representatives and of the Powers Granted Under Statutes for Durable Powers of Attorney (DPA) for Health Care

Recommendation 15. In order to expand the category of LARs:

(A) An investigator should accept as an LAR, subject to the requirements in Recommendation 14, a relative or friend of the potential subject who is recognized as an LAR for purposes of clinical decision making under the law of the state where the research takes place.

(B) States should confirm, by statute or court decision, that:

(1) An LAR for purposes of clinical decision making may serve as an LAR for research; and

(2) Friends as well as relatives may serve as both clinical and research LARs if they are actively involved in the care of a person who lacks decisionmaking capacity.

Recommendation 16. States should enact legislation, if necessary, to ensure that persons who choose to plan for future research participation are entitled to choose their LAR.

Involving Subjects' Family and Friends

Recommendation 17. For research protocols involving subjects who have fluctuating or limited decisionmaking capacity or prospective incapacity, IRBs should ensure that investigators establish and maintain ongoing communication with involved caregivers, consistent with the subject's autonomy and with medical confidentiality.

VI. Recommendations Regarding Education, Research, and Support

Reviewing and Developing Educational Materials Regarding Research

Recommendation 18. Professional associations and organizations should develop (or review their existing) educational materials pertaining to research involving persons with mental disorders to ensure that they are adequate to inform the health care community and the public of ethical issues related to the involvement of such persons as research subjects, and to convey the importance of measures to ensure that their rights and welfare are adequately protected.

Expanding Knowledge About Capacity Assessment and Informed Consent

Recommendation 19. The National Institutes of Health (NIH) should sponsor research to expand understanding about decisionmaking capacity, the best means for assessing decisionmaking capacity, and techniques for enhancing the process of informed consent, and the possible roles of surrogate decision makers in research. It should sponsor research to evaluate the risks of various research interventions, and the attitudes of potential subjects toward the prospect of participating in research. Particular attention should be paid to attitudes toward participating in research of greater than minimal risk that does not offer the prospect of direct medical benefit to subjects. These data may be of particular value to the panel described in Recommendation 2.

The NIH should ensure that proposals for training grants and center grants include appropriate provisions for training and technical assistance in the issues discussed in this report. Where appropriate, the NIH and the Office for Protection from Research Risks (OPRR) should consider using consensus development conferences or workshops to advance discussion of these issues.

Institute of Medicine Review of Research Studies

Recommendation 20. The Department of Health and Human Services should contract with the Institute of Medicine to conduct a comprehensive review and evaluation of the nature and extent of challenge, washout, and placebo controlled studies with subjects with mental disorders that may affect decisionmaking capacity.

Increased Funding To Support Necessary Protections of Human Subjects

Recommendation 21. Compliance with the recommendations set forth in this report will require additional resources. All research sponsors (government, private sector enterprises, and academic institutions) should work together to make these resources available.

FOR FURTHER INFORMATION ABOUT THE REPORT CONTACT: Eric M. Meslin, Ph.D., Executive Director, National Bioethics Advisory Commission or to obtain copies of the report contact: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900. Copies may also be obtained through the NBAC website: www.bioethics.gov.

Dated: February 12, 1999.

Eric M. Meslin,

Executive Director,

National Bioethics Advisory Commission.

[FR Doc. 99–4190 Filed 2–18–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (formerly Hospital Infection Control Practices Advisory Committee), Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Healthcare Infection Control Practices Advisory Committee (HICPAC), National Center for Infectious Diseases (NCID), of the Department of Health and Human Services, has been renewed for a 2-year period through January 19, 2001.

For information, contact Michele Pearson, M.D., Executive Secretary, HICPAC, NCID, CDC, 1600 Clifton Road, m/s A07, Atlanta, Georgia 30333. Telephone 404/639–6400.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 11, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–4089 Filed 2–18–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99017]

Evaluating Potential Exposures To Blood and Risk of Hepatitis C Virus (HCV) Infection Among Persons Without Traditional Risk Factors; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for evaluating potential exposures to blood and risk of hepatitis C virus (HCV) infection among persons without traditional risk factors. This program addresses the ''Healthy People 2000'' priority area of Immunization and Infectious Diseases. The purpose of the program is to provide assistance for addressing the risk of HCV or hepatitis B virus (HBV) transmission through potential but unproven mucosal or percutaneous exposures to blood in the United States. Specifically, applications are solicited for projects aimed at determining if there is an increased risk of HCV or HBV infection associated with illegal intranasal drug use (e.g., cocaine or heroin), anabolic steroid abuse, tattooing, or body piercing in populations with a low prevalence of illegal injection drug use.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $150,000 is available in FY 1999 to fund one award. It is expected that the award will begin on or about June 1999 and will be made for a 12-month budget period within a project period of one year. The funding estimate may change.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under (Recipient Activities), and CDC will be responsible for the activities listed under (CDC Activities).

Recipient Activities

1. Conduct research to determine if there is a risk of HCV or HBV infection, independent of known risk factors for transmission, associated with percutaneous exposures, such as tattooing, body piercing, or illegal injection of anabolic steroids, or permucosal exposures, such as use of illegal intranasal drugs.

2. Develop a study protocol to determine the prevalence of potential exposures for bloodborne pathogen transmission (i.e., illegal intranasal drug use, anabolic steroid abuse, tattooing, body piercing) in populations with a low prevalence of illegal injection drug use and their prevalence of HCV and HBV infection.

3. Based on the protocol, conduct an epidemiologic study of the potential association between HCV or HBV infection and illegal intranasal drug use, anabolic steroid abuse, tattooing, and body piercing.

4. Analyze, interpret, and publish results.

CDC Activities

1. Upon request of recipient, provide technical assistance in the design, conduct, and analysis of the research,

including development of the questionnaire and analytic plan.

2. Upon request of recipient, perform serologic testing for HCV and HBV infection and report results back to study investigators.

3. Upon request of recipient, participate in the analysis of the research data and the interpretation and presentation of research findings.

4. If CDC is requested to provide technical assistance in the design of the study, CDC will participate in the development of a research protocol for Internal Review Board (IRB) review by all institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 10 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

F. Submission and Deadline Application

Submit the original and five copies of PHS–398 [(OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398)]. Forms are in the application kit. On or before May 10, 1999, submit the application to: Andrea Wooddall, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99017, Centers for Disease Control and Prevention, 2920 Brandywine Road, Mailstop E–18, Atlanta, Georgia 30341–4146.

If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (10 points): Extent to which applicant demonstrates a clear understanding of the subject area and of the purpose and objectives of this cooperative agreement program.

2. Capacity (45 points): Extent to which applicant describes adequate resources and facilities (both technical and administrative) for conducting the project. Extent to which applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research related to that proposed, as evidenced by curriculum vitae, publications, etc. If applicable, extent to which applicant includes letters of support from non-applicant organizations, individuals, etc., and the extent to which such letters clearly indicate the author's commitment to participate as described in the operational plan.

3. Objectives and Technical Approach (45 points total):

a. Extent to which applicant describes objectives of the proposed project which are consistent with the purpose and goals of this cooperative agreement program and which are measurable and time-phased. (10 points)

b. Extent to which applicant presents a detailed operational plan for initiating and conducting the project, which clearly and appropriately addresses all ''Recipient Activities'' for the specific project area being addressed in the application. Extent to which applicant clearly identifies specific assigned responsibilities of all key professional personnel. Extent to which the plan clearly describes applicant's technical approach/methods for conducting the proposed studies and extent to which the approach/methods are appropriate and adequate to accomplish the objectives. Extent to which applicant describes specific study protocols or plans for the development of study protocols that are appropriate for achieving project objectives. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (2) the proposed justification when representation is limited or absent, (3) a statement as to whether the design of the study is adequate to measure differences when warranted, and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (30 points)

c. Extent to which applicant provides a detailed and adequate plan for evaluating progress toward achieving project process and outcome objectives. If the proposed project involves notifiable conditions, the degree to which applicant describes an adequate process for providing necessary information to appropriate State and or local health departments. (5 points)

4. Budget: (not scored) Extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of cooperative agreement funds.

5. Human Subjects: Does the application adequately address the requirements of 45 CFR 46 for the protection of human subjects?

____Yes ____No

Comments:_____

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. progress reports (semiannual)

2. Financial and final Performance reports, no more than 90 days after the end of the project period.

Send all reports to: Andrea Wooddall, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Mailstop E–18, Atlanta, GA 30341–4146.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act Sections 301(a) [42 U.S.C. 241 (a)], 317(k)(2), [42 U.S.C. 247b(k)(1)] and [247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

To obtain additional information, contact: Andrea Wooddall, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99017, Centers for Disease Control and Prevention, 2920 Brandywine Road,

Mailstop E–18, Atlanta, GA 30341–4146, telephone (770) 488–2751, Fax (770) 488–2777, Email address: ayw3@cdc.gov.

See also the CDC Home Page on the Internet for applicable forms: http://www.cdc.gov.

For program technical assistance, contact Rob Lyerla, Ph.D., Centers for Disease Control and Prevention, National Center for Infectious Diseases, Division of Viral and Rickettsial Diseases, Hepatitis Branch, 1600 Clifton Rd N.E., Mailstop G37, Atlanta, GA 30333, Phone: 404–639–3048, E-mail address: rfl8@cdc.gov

To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888 472-6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

Dated: February 12, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–4093 Filed 2–18–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

The Advisory Council for Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., March 10, 1999. 8:30 a.m.–12 p.m., March 11, 1999.

Place: Corporate Square Office Park, Corporate Square Boulevard, Building 11, Room 1413, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: Agenda items include revisiting the 1989 TB elimination strategic plan; discussion of combined preparations of TB drugs; update on contact studies; and follow-up on TB vaccine issues. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Beth Wolfe, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 11, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–4090 Filed 2–18–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families (ACF)

[Program Announcement No. OCSE 99SIP–1]

Child Support Enforcement Demonstration and Special Projects—Special Improvement Projects

AGENCY: Office of Child Support Enforcement (OCSE), ACF, DHHS.

ACTION: Notice.

SUMMARY: The OCSE invites eligible applicants to submit competitive grant applications for special improvement projects which further the national child support mission, vision, and goals which are: all children to have parentage established; all children in IV–D cases to have financial and medical orders; and all children in IV–D cases to receive financial and medical support. Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

DATES: The closing date for submission of applications is April 20, 1999. See Part IV of this announcement for more information on submitting applications.

ADDRESSES: Application kits (Forms 424, 424A–B; Certifications; and Administration for Children and Families Uniform Project Description [UPD]) containing the necessary forms and instructions to apply for a grant under this program announcement are available from: Administration for Children and Families, Office of Child Support Enforcement, Division of State and Local Assistance, 370 L'Enfant Promenade, SW, 4th Floor, East Wing, Washington, DC 20447 (This is not the mailing **ADDRESS** for submission of applications, See Part IV, B.); or contact Jean Robinson, Program Analyst, phone (202) 401–5330, FAX (202) 401–5559; e-mail, jrobinson@acf.dhhs.gov.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families (ACF), OCSE, Susan A. Greenblatt at (202) 401–4849, for specific questions regarding the application or program concerns regarding the announcement.

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: Background—program purpose, program objectives, legislative authority, funding availability, and CFDA Number.

Part II: Project and Applicant Eligibility—eligible applicants, project priorities, and project and budget periods.

Part III: The Review Process—intergovernmental review, initial ACF screening, competitive review and evaluation criteria, and funding reconsideration.

Part IV: The Application—application development, and application submission.

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

The following information collections within this Program Announcement are approved under the following currently valid OMB control numbers: 424 (0348–0043); 424A (0348–0044); 424B (0348–0040); Disclosure of Lobbying Activities (0348–0046); Uniform Project Description (0970–0139 Expiration date 10/31/00).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part I. Background

A. Program Purpose and Objectives

To fund a number of special improvement projects which further the national child support mission to ensure that all children receive financial and

medical support from both parents and which advance the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). PRWORA strengthens the ability of the Nation's child support program to collect support on behalf of children and families. The law also enables the testing of child support innovations to improve program performance. For FY 1999, we are looking for grants in the following priority areas:

- Foster collaboration between IV-D State agencies and partner entities and other states to improve interstate case processing.
- Assist Tribal governments to plan and provide Child Support Enforcement (CSE) services to Native Americans and to evaluate effective program procedures and strategies.
- Develop planning grants and random assignment demonstrations to assess effectiveness of child support assurance projects.

Specific design specifications for each of these priority areas are set forth under Part II.

OCSE is committed to helping States make measurable program improvements that will enhance the lives of children. In addition Special Improvement Projects will also be considered which do not fall into one of the specified priority areas but which are in furtherance of efforts under the Government Performance and Results Act (i.e. designing a performance based program), and furthering the goals of the national child support enforcement program —all children to have parentage established; all children in IV-D cases have financial and medical orders; and all children in IV-D cases receive financial and medical support) and advance the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

Applicants should understand that OCSE will not award grants for special improvement projects which (a) duplicate automated data processing and information retrieval system requirements/enhancements and associated tasks which are specified in PRWORA; or (b) which cover costs for routine activities which should be normally borne by the Federal match for the Child Support Program or by other Federal funding sources (e.g. adding staff positions to perform routine CSE tasks or providing substance abuse services;) OCSE also has the discretion not to award grants that duplicate existing demonstrations, special projects and/or contracts that cover similar project objectives and activities.

Proposals should be developed with these considerations in mind. Proposals and their accompanying budgets will be reviewed from this perspective.

B. Legislative Authority

Section 452(j), 42 U.S.C. 652(j) of the Social Security Act provides Federal funds for technical assistance, information dissemination and training of Federal and State staff, research and demonstration programs and special projects of regional or national significance relating to the operation of State child support enforcement programs.

Section 453 (42 U.S.C. 653) of the Social Security Act provides Federal funds to cover costs incurred for the operation of the Federal Parent Locator Service.

C. Availability of Funds

Approximately $2 million is available for FY 1999 for all priority areas. Refer to each priority area for estimated number of projects and funding. All grant awards are subject to the availability of appropriated funds. A non-Federal match is not required.

D. CFDA Number: 93.601—Child Support Enforcement

Demonstrations and Special Projects.

Part II. Applicant and Project Eligibility

A. Eligible Applicants

Eligible applicants for these special improvement project grants are State (including Guam, Puerto Rico, and the Virgin Islands) Human Services Umbrella agencies, other State agencies (including State IV-D agencies), Tribes and Tribal Organizations, local public agencies (including IV-D agencies), nonprofit organizations, and consortia of State and/or local public agencies. The Federal OCSE will provide the State CSE agency the opportunity to comment on the merit of local CSE agency applications before final award. Given that the purpose of these projects is to improve child support enforcement programs, it is critical that applicants have the cooperation of IV-D agencies to operate these projects.

Preferences will be given to applicants representing CSE agencies and applicant organizations which have cooperative agreements with CSE agencies. All applications developed jointly by more than one agency organization must identify a single lead organization as the official applicant. The lead organization will be the recipient of the grant award.

Participating agencies and organizations can be included as co-participants, subgrantees, or subcontractors with their written authorization.

B. Project Priorities

The following are the specified priority areas for special improvement projects for FY 1999.

Priority Area 1.01: Fostering Improved Interstate Case Processing

Purpose: The purpose of this solicitation is to assist States to demonstrate new and/or more effective methods, procedures and models to foster collaborative efforts between partner entities and states to improve interstate case processing.

2. Background and Information: The child support provisions of welfare reform require all States to adopt the Uniform Interstate Family Support Act (UIFSA) by January 1, 1998. UIFSA replaced the Uniform Reciprocal Enforcement of Support Act (URESA), which required states to reciprocate in the enforcement of duties of support. Since rules weren't uniform among States, it made the interstate enforcement of support difficult in many cases. Thus, UIFSA provides for uniform rules, procedures, and forms for interstate cases. OCSE has been working with states to implement UIFSA and has also developed standard Federal interstate CSE forms compatible with UIFSA.

OCSE organized forums across the country for representatives from the UIFSA and URESA states to discuss and develop consensus methods for implementing administrative enforcement, direct income withholding, discovery, long-arm, and paternity establishment in interstate cases. Subsequently, many states have managed to process interstate cases in an uniform manner. Although a great deal of progress has been made over the past couple of years, states are still facing many challenges in the implementation of UIFSA.

3. Design Elements in the Application: In order to foster collaboration to improve interstate case processing under UIFSA, OCSE is interested in projects which develop effective/innovative strategies that address one or more of the following key issues/areas:

- What types of specific collaborative initiatives/methods between the courts and IV-D agencies would assist in processing interstate cases more efficiently and what procedures could help them more effectively use available UIFSA remedies and associated forms? How are States ensuring that the required data elements are correctly secured from courts and reported to IV-

D agencies for transmission to the Federal Case Registry.

Too often IV-D agencies and the courts do not have procedures to notify each other when taking actions on interstate cases, resulting in duplicate efforts and delays. Thus, we want to identify collaborative initiatives/methods that help build communication, avoid duplicate efforts and delays in processing interstate cases.

- What are the benefits and pitfalls of using direct withholding under UIFSA compared to interstate income withholding from IV–D agency to IV–D agency in different States? What are solutions to any problems encountered? What happens if there's an obligor contest in a direct withholding case? Is abandoning the direct withholding the best solution or are there ways to resolve these issues through the IV–D agency in the employer State that preserves the direct withholding? What impact does direct income withholding have on other services required in a case? Does it work to do direct withholding and initiate an interstate IV–D case for other necessary enforcement action? In addition, what approaches are being used by IV–D agencies to encourage and foster employer cooperation of wage withholding for interstate cases? Currently, state IV–D agencies are educating employers on using Federally mandated forms for income withholding for their child support cases but more needs to be done to encourage employers' compliance for interstate cases.
- What are the more cost-effective methods/approaches for interstate service of process? Projects should demonstrate whether in-house, or privatization or another approach is more cost-effective and efficient for service of process in interstate cases.
- With respect to high volume automated enforcement in interstate cases under PRWORA, what are exemplary practices for integrating these requests from other states into the assisting State's own data matching and attachment of assets (such as for financial institutions data matches and levies) in instate cases? What is the best way to avoid making these cases full blown interstate IV–D cases while being able to provide the data match and seizure of assets in an automated way and to keep track of information required to be reported on these cases?
- How is the Federal Parent Locator System (FPLS) data being integrated into the basic business functions of child support enforcement (*i.e.*, intake, paternity establishment, order establishment/modification, enforcement and collections) to improve these business functions? How are more effective interstate locate methods/processes being developed through this integration of FPLS data? How are these methods being implemented in an automated fashion? How are caseworkers being sold on the advantages of using ''new'' FPLS data?
- What approaches are being used by IV–D agencies to monitor results, measure progress and manage interstate case processing more efficiently? The wealth of data provided from the National Directory of New Hires and the Federal Case Registry must be organized and managed in order to track results and program benefits. What methods have been adopted by States for tracking outcomes of data matches and how have results been utilized to demonstrate program benefits (*i.e.*, program methodology, benefit calculation methodology, reports, management information process, and performance measurements).
- With respect to use of interstate forms for withholding, imposition of liens and issuance of administrative subpoenas under PRWORA, are there exemplary techniques for maximizing successful use of these tools in interstate cases? Are there potential problems that arise in their use and tested solutions to those problems?
- How can we ensure consistency in policy and procedures in cases affected by both the Family Violence Indicator and UIFSA section 312 (nondisclosure of information in exceptional circumstances) to ensure consistent decision-making for interstate cases? In the UIFSA process, tribunals order information not to be released where a finding has been made that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information.

Whereas, with the Family Violence Indicator, a flag will be placed on a case by the State Case Registry where there is a protective order in place or where the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the child of such parent. Projects should develop approaches to demonstrate how best to coordinate these different decision-making processes for interstate cases? Projects should identify the benefits/impact of the approach on States' case processing? In addition, how can we provide courts with sufficient information upon which to base their override decisions of the Family Violence Indicator? Currently in the interstate context, one State will not know the basis for a decision of another State to flag a case with the Family Violence Indicator, and this lack of information may prove difficult for judges faced with requests to override the indicator.

4. Project and Budget Periods: Generally, project and budget periods for these projects will be up to 17 months. OCSE will consider projects up to 36 months, if unique circumstances warrant. If OCSE approves a project for a time period longer than 17 months, OCSE will provide funding in discrete 12-month increments, or ''budget periods.'' Funding beyond the first 12-month budget period is not guaranteed. Rather, future funding will depend on the grantee's satisfactory performance and the availability of future appropriations.

5. Project Budget: It is estimated that there will be one to four grants awarded (ranging from $300,000 to $1 million) for a total of $1.2 million, for this priority area.

Priority Area 1.02: Tribal Child Support Enforcement Services

Purpose: The purpose of this solicitation is to foster the development and improvement of child support enforcement programs on tribal reservations. We intend to obtain information regarding innovations in the effective delivery of child support enforcement services to Native American children and their parents for dissemination nationally.

2. Background and Information: The provision of title IV–D child support services on Tribal lands can be a challenge for both Native American custodial parents, noncustodial parents and their children who need support and for tribal governments and courts which have traditionally lacked funding for providing such services. Often, tribal sovereignty and a lack of jurisdiction have prevented States from providing such services on tribal lands.

There has been recent progress by a number of tribes who developed CSE programs, cooperative agreements with States, improved the ability of tribal courts to handle support cases, development and enactment of tribal child support, etc.

With the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Congress gave the Secretary of Health and Human Services authority to prescribe regulations to provide direct IV–D funding to tribes.

OCSE wants to both build on previous efforts by furthering the development of tribal child support programs and

services and assist tribes who wish to prepare for the implementation of direct funding in the future.

3. Design Elements in the Application: Based on previous developments and pending availability of direct IV–D funding to tribes, OCSE wants to encourage further improvements to child support capabilities on Indian lands. Some examples of the areas where approaches may be focused include:

- Adding to existing capability of a tribal child support program, e.g., expanding services to all tribal members in need of services, wage/income withholding.
- Legislative Development and/or Enactment. Some tribes may need to establish a legal framework for the operation of a future child support program or if a model code is available, that code must be enacted by tribal councils.
- Training for program staff, tribal court judges. Implementation of newly enacted child support codes and establishment of services may include orientation and training for responsible officials and staff.
- Planning. Tribes may have enacted child support codes but need to plan implementation of a program that provides services. This might include looking at automated systems, identifying staff, shaping roles and responsibilities between organizations such as the support program and tribal courts.
- Cooperative Agreements/Building Partnerships. Again, formal relationships may need to be established between tribal courts and the child support staff. Tribes may want to explore agreements with state or local governments that have experience and capabilities such as training, automated systems, location, etc. Cooperation between State and tribal governments may be necessary for effective child support enforcement when cases involve more than one jurisdiction.
- Tribal Statewide or Regional Institutions. A tribe or tribes and/or an intertribal council or a regional council of tribes may wish to design a partnership demonstration addressing child support issues of common concern on an intrastate, statewide or regional basis.
- Privatization. States and tribes may seek to develop innovative approaches through contracts with third parties to provide IV–D services on Tribal lands.

Where a partnership is being proposed between one or more tribes, a regional tribal council and a tribe or a state and a tribe, include a letter of support/cooperation from an appropriate official of the partnering entity/organization.

4. Project and Budget Periods: Generally, project and budget periods for these projects will be up to 17 months. OCSE will consider projects up to 36 months, if unique circumstances warrant. If OCSE approves a project for a time period longer than 17 months, OCSE will provide funding in discrete 12-month increments, or ''budget periods.'' Funding beyond the first 12-month budget period is not guaranteed. Rather, future funding will depend on the grantee's satisfactory performance and the availability of future appropriations.

5. Project Budget: It is estimated that there will be three grants awarded for a total of $150,000 for this priority area.

Priority Area 1.03: Child Support Assurance

1. Purpose: The purpose of this solicitation will be to obtain information on the feasibility of, and innovative methods of establishing a child support assurance program. We will be particularly interested in projects that will provide replicable models.

2. Background Information: The concept of child support assurance builds upon the basic tenets of child support enforcement. All parents who do not live with their children are expected to help provide for them. A child with a living, nonresident parent would be entitled to benefits equal to either the child support paid by the nonresident parent or a socially assured minimum payment, whichever was higher. If the obligor pays less than that amount, the difference would be made up, in this case, by the demonstration project.

3. Design Elements: Elements we would like to see included in proposals include, but are not limited to the following:

- Feasibility Study(ies): A number of factors would have an impact upon the possibility of sustaining a child support assurance project beyond a demonstration.
- For example, what would the net cost of such a program be? Would differences in State financing of their IV–D programs effect the funding/public support and/or perception of a child support assurance program?
- What type of training and/or administrative support is needed to implement child support assurance?
- What types of legislative and/or policy changes would be needed?
- Are there caseloads that, because of their compositions, would be better/not as well suited, for child support assurance demonstrations?
- How would child support assurance be best integrated into the changes that the Personal Responsibility and Work Opportunity Act of 1996 made to the IV–D program?
- Demonstration Project(s): We are interested in demonstrations that would test a number of variables that could be included in a child support assurance program such as:
- What is the optimal assured benefit level? At what level is the benefit enough to serve as an incentive for families but not too much to be cost prohibitive for States? Typical benefit levels are amounts sufficient to raise a family above the poverty line, $1,000—$3,000 per child with increases for additional children.
- Should the benefit be a universal or means tested program? As originally conceived, child support assurance would be a universal program because it may serve as a greater incentive for obligors to work. On the other hand, means testing is one way to target public dollars to those in greatest need. We would be interested in demonstrations that test both hypotheses.
- What is the effect upon TANF rolls of a comprehensive child support assurance strategy? Does participation in a child support assurance program help to move families off of TANF to self-sufficiency?
- What types of requirements should there be for participating in a child support assurance project? Should participation be limited to parents participating and/or making progress in fatherhood programs, work programs, parenting classes, substance abuse/remedial education programs?
- Does participation in a child support assurance program serve as an incentive to work?
- What should be the impact of receipt of child support assurance when determining eligibility of other government programs including TANF?

4. Project and Budget Periods: The project period for this priority area is thirty-six months. The budget period will be for 12 months. Funding beyond the first 12-month budget period is not guaranteed. Rather, future funding will depend on the grantee's satisfactory performance and the availability of future appropriations.

5. Project Budget: It is estimated that $250,000 will be available per year for this priority area. The number of grants to be awarded will depend upon the quality of the applications received.

Other: OCSE will target funding for projects which fall under the three priority areas described above. However, OCSE will also screen and evaluate smaller scale projects (up to

$50,000 per project) to cover projects outside the scope of these priority areas, consistent with the legislative authority described under Part I.B., subject to the availability of funds. Eligible applicants should describe how the special improvement project will improve the effectiveness of the child support program and promote a new focus on results, service quality, management/ organizational innovations, outreach or public satisfaction.

Applicants should understand that OCSE will not award grants for special improvement projects which a) duplicate automated data processing and information retrieval system requirements/enhancements and associated tasks which are specified in PRWORA; or b) which cover costs for routine activities which should be normally borne by the Federal match for the Child Support Program or by other Federal funding sources (e.g. adding staff positions to perform routine CSE tasks or providing substance abuse services;) OCSE also has the discretion not to award grants that duplicate existing demonstrations, special projects and/or contracts that cover similar project objectives and activities. The project and budget period will be up to 17 months. It is estimated that there will be up to eight grants to be awarded (up to $50,000 each).

Part III: The Review Process

A. Intergovernmental Review

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Note: State/territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. a potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its single point of contact (SPOC), if applicable, or to ACF.

As of November 20, 1998, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alabama, Alaska, American Samoa , Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility criteria of the program may still apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions.

Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, Office of Grants Management, Attention: Lionel Jay Adams, 370 L'Enfant Promenade, SW., 4th Floor, West Wing, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this program announcement.

B. Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding.

It is necessary that applicants state specifically which priority area they are applying for. Applications will be screened for priority area appropriateness. If applications are found to be inappropriate for the priority area in which are submitted, applicants will be contacted for verbal approval of redirection to a more appropriate priority area.

C. Competitive Review and Evaluation Criteria

Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the evaluation criteria within the context of this program announcement. Proposed projects will be reviewed using the following evaluation criteria:

(1) Criterion I: Objectives and Need for Assistance (Maximum 25 points)

The application should demonstrate a thorough understanding and analysis of the problem(s) being addressed in the project, the need for assistance and the importance of addressing these problems in improving the effectiveness of the child support program. The applicant should describe how the project will address this problem(s) through implementation of changes, enhancements and innovative efforts and specifically, how this project will improve program results. The applicant should address one or more of the activities listed under the ''Design Elements in the Application'' described above for the specific priority area they are applying for (refer to Part II.B. Project Priorities). The applicant should identify the key goals and objectives of the project; describe the conceptual framework of its approach to resolve the identified problem(s); and provide a rationale for taking this approach as opposed to others.

(2) Criterion II: Approach (Maximum: 30 points)

A well thought-out and practical management and staffing plan is mandatory. The application should include a detailed management plan that includes time-lines and detailed budgetary information. The main concern in this criterion is that the applicant should demonstrate a clear idea of the project's goals, objectives, and tasks to be accomplished. The plan to accomplish the goals and tasks should be set forth in a logical framework. The plan should identify

what tasks are required of any contractors and specify their relevant qualifications to perform these tasks. Staff to be committed to the project (including supervisory and management staff) at the state and/or local levels must be identified by their role in the project along with their qualifications and areas of particular expertise. In addition, for any technical expertise obtained through a contract or subgrant, the desired technical expertise and skills of proposed positions should be specified in detail. The applicant should demonstrate that the skills needed to operate the project are either on board or can be obtained in a reasonable time.

(3) Criterion III: Evaluation (Maximum: 30 points)

The applicant should describe the cost effective methods which will be used to achieve the project goals and objectives; the specific results/products that will be achieved; how the success of this project can be measured and how the success of this project has broader application in furthering national child support initiatives and/or providing solutions that could be adapted by other states/jurisdictions. A discussion of data availability and outcome measures to be used should be included. Describe the collection and reporting system to be used. For applications under Priority Area 1.03—Child Support Assurance, a randomly assigned control group is preferred and applicants should describe the ongoing and retrospective evaluation of the project that will be used.

(4) Criterion IV: Budget and Budget Justification (Maximum 10 points)

The project costs need to be reasonable in relation to the identified tasks. A detailed budget (e.g., the staff required, equipment and facilities that would be leased or purchased) should be provided identifying all agency and other resources (i.e., state, community other program—TANF/Head Start) that will be committed to the project. Grant funds cannot be used for capital improvements or the purchase of land or buildings. Explain why this project's resource requirements cannot be met by the state/local agency's regular program operating budget.

(5) Criterion V: Preferences (Maximum 5 points)

Preference will be given to those grant applicants representing IV–D agencies and applicant organizations who have cooperative agreements with IV–D agencies.

D. Funding Reconsideration

After Federal funds are exhausted for this grant competition, applications which have been independently reviewed and ranked but have no final disposition (neither approved nor disapproved for funding) may again be considered for funding. Reconsideration may occur at any time funds become available within twelve (12) months following ranking. ACF does not select from multiple ranking lists for a program. Therefore, should a new competition be scheduled and applications remain ranked without final disposition, applicants are informed of their opportunity to reapply for the new competition, to the extent practical.

Part IV. The Application

A. Application Development

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. Application materials including forms and instructions are available from the contact named under the **ADDRESSES** section in the preamble of this announcement. The length of the application, including the application forms and all attachments, should not exceed 20 pages. A page is a single-side of an 8½″×11″ sheet of plain white paper. The narrative should be typed double-spaced on a single-side of an 8½″×11″ plain white paper, with 1″ margins on all sides. Applicants are requested not to send pamphlets, maps, brochures or other printed material along with their application as these are difficult to photocopy. These materials, if submitted, will not be included in the review process. Each page of the application will be counted (excluding required forms and certifications) to determine the total length.

The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Part III.C. The Administration for Children and Families Uniform Project Description in the application kit provides general requirements for these evaluation criteria (i.e., Objectives and Need for Assistance; Approach; Evaluation; Budget and Budget Justification).

B. Application Submission

1. Mailed applications postmarked after the closing date will be classified as late and will not be considered in the competition.

2. Deadline. Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Office of Child Support Enforcement, Attention: Lionel Jay Adams, 370 L'Enfant Promenade, S.W., 4th Floor West, Washington, D.C. 20447.

APPLICANTS MUST ENSURE THAT A LEGIBLY DATED U.S. POSTAL SERVICE POSTMARK OR A LEGIBLY DATED, MACHINE-PRODUCED POSTMARK OF A COMMERCIAL MAIL SERVICE IS AFFIXED TO THE ENVELOPE/PACKAGE CONTAINING THE APPLICATION(S).

To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed). EXPRESS/OVERNIGHT MAIL SERVICES SHOULD USE THE 901 D STREET ADDRESS INSTRUCTIONS AS SHOWN BELOW.

Applications handcarried by applicants, applicant couriers, or by other representatives of the applicant using express/overnight mail services, will be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, addressed to the U.S. Department of Health and Human Services, Administration for Children and Families, Attention: Lionel Jay Adams, Office of Grants Management, Office of Child Support Enforcement, and delivered at ACF Mailroom, 2nd Floor (near loading dock), Aerospace Building, 901 D Street, S.W., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application. ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

3. Late applications. Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its

application will not be considered in the current competition.

4. Extension of deadlines. ACF may extend an application deadline when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruption of the mail service, or in other rare cases. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

Dated: February 5, 1999.

David Gray Ross,

Commissioner, Office of Child Support Enforcement.

[FR Doc. 99–4143 Filed 2–18–99; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 11, 1999, 12:30 p.m. to 3:30 p.m.

Location: Food and Drug Administration, Bldg. 29, conference room 121, 8800 Rockville Pike, Bethesda, MD. This meeting will be held by telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting.

Contact Person: Nancy T. Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: This committee will complete recommendations pertaining to the influenza virus vaccine formulation for the 1999 to 2000 influenza season.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 4, 1999. Oral presentations from the public will be scheduled between approximately 1:45 p.m. and 2:45 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 4, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 11, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–4113 Filed 2–18–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–2552]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; Title of Information Collection: Hospital and Hospital Health Care Complex Cost Report, 42 CFR 413.20 and 413.24; Form No.: HCFA–2552–96; Use: This form is required by statute and regulation for participation in the Medicare program. It is filed annually by providers of service participating in the Medicare program to determine final payment for Medicare. It is used by hospitals, rural health clinics, and federally qualified health centers. Frequency: Annually and daily; Affected Public: Business or other for-profit, Not-for profit institutions, and State, Local or Tribal government; Number of Respondents: 7,000; Total Annual Responses: 7,000; Total Annual Hours Requested: 4,599,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 11, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–4151 Filed 2–18–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities; Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of

proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are Invited on

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Healthy Start Data Reporting Requirements—New

This project will annually collect and report data from Federal Healthy Start grantees using electronic reporting formats. Information will be obtained on the utilization of local Healthy Start services, the characteristics of the populations served, and the impact of provided services on the health and pregnancy outcomes of clients served. These data will enable grantees to document project accomplishments and will provide information that will be used in setting priorities and decisionmaking for Federal program managers.

The burden estimate is as follows:

Type of respondent	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Grantees	95	1	77	7,315
Total	95			7,315

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 12, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–4108 Filed 2–18–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are Invited on

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Health Service Corps (NHSC) Professional Training and Information Questionnaire (PTIQ) OMB No. 0915–0208: Revision

The Health Resources and Services Administration, Bureau of Primary Health Care, NHSC assists medically underserved communities through the placement of primary health care professionals in health professional shortage areas.

The PTIQ is used to collect data related to professional issues, family concerns, and assignment preferences from NHSC obligated Scholarship Program Recipients including physicians, physician assistants (PAs), nurse practitioners (NPs), certified nurse midwives (CNMs), and other disciplines in the current year's placement cycle. These data are used to match an individual health care professional with the most appropriate clinical practice setting.

The PTIQ will be mailed twelve months in advance of the intended service availability date.

The burden estimate is as follows:

Type of respondent	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Health care professionals	377	1	12 minutes	76
Total	377			76

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 12, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–4109 Filed 2–18–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: January 1999

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions During the month of January 1999, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
Program-Related Convictions	
APARICID-RUBIO, BEATRIZ ... YERINGTON, NV	02/18/1999
BURNSIDE, SALINA ..... JACKSON, MS	02/18/1999
CANASI, EVELINA ..... TAMPA, FL	02/18/1999
DEL RIO, DIGNORA ..... HIALEAH, FL	02/18/1999
DESAI, RAGHUNATH H ..... CLEARWATER, FL	02/18/1999
DOLLAR, ZELDER ..... DECATUR, GA	02/18/1999
ESKANDARI, MOSLEM ..... GREAT FALLS, VA	02/18/1999
EXTENDICARE CORP ..... CLEARWATER, FL	02/18/1999
GILL, MINNIE E ..... RICHMOND, VA	02/18/1999
HAN, IN KYO ..... CLAREMONT, CA	02/18/1999
HEIDEN, MARSHALL ARNOLD HOLLYWOOD, SC	02/18/1999
JOHNSON, GARY L ..... PHILADELPHIA, PA	02/18/1999
LAUREL STREET PHARMACY, INC ..... BEDFORD, NH	02/18/1999
PETALAS, CHARLES ..... BEDFORD, NH	02/18/1999
PIERCE, DANA LOUISE ..... CLINTON, AR	02/18/1999
SHOWS, MELISSA D ..... COLUMBUS, MS	02/18/1999
VAGHELA, KISHOR ..... TALLAHASSEE, FL	02/18/1999
VINTER, ROMAN ..... BROOKLYN, NY	02/18/1999
VO, HAI LE TRUONG ..... TEMPE, AZ	11/04/1998
YAHOLA, ROMAN ..... EL RENO, OK	02/18/1999
Patient Abuse/Neglect Convictions	
BAGWELL, POLLA DARLENE BALTIMORE, MD	02/18/1999
BOOKER, YVETTE C ..... CLINTON, SC	02/18/1999
BROOKS, FRANCES JEAN ..... ABILENE, TX	02/18/1999
BROWN, SHEDRICK CORNEL MANY, LA	02/18/1999
COLANTONI, GUIDO ..... SAINT LEONARD,	02/18/1999
EDWARDS, FLORA JEAN WEIR, MS	02/18/1999
GUILLAME, ODIEU ..... LYNN, MA	02/18/1999
HENKE, MITZI L ..... HUNTER, OK	02/18/1999
HOWARD, JANICE ..... EFFINGHAM, SC	02/18/1999
JAMES, GLORIA R ..... COLUMBIA, SC	02/18/1999
JOHNSON, DEBRA REGINA ... WESTWEGO, LA	02/18/1999
JOHNSON, LINDA FAYE ..... ALEXANDRIA, LA	02/18/1999
JONES, WALTER LACURTIE JR ..... JENA, LA	02/18/1999
LAXEY, BRIDGETTE MARIE ... LAFAYETTE, LA	02/18/1999
LOCASH, JUDITH LYNNE ..... ILION, NY	02/18/1999
MAZULA, JOSEPH A ..... DURANGO, CO	02/18/1999
NELLAMS, DOROTHY KAY .... PINEVILLE, LA	02/18/1999
RHABB, YULONDA ..... SUMTER, SC	02/18/1999
SMALL, EDITH ..... MANNING, SC	02/18/1999
THOMAS, SANDRA D ..... RIDGEWAY, SC	02/18/1999
WILLIAMS, GREG ..... CANTON, MS	02/18/1999
WOOD, JANET A ..... EPPING, NH	02/18/1999
CONTROLLED SUBSTANCE CONVICTIONS	
GRINDROD, PHYLLIS ..... LIMA, OH	02/18/1999
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ADAMS, ROBERT H ..... ST MARYS, OH	02/18/1999
ADAMS, MITCHELL R ..... VENTURA, CA	02/18/1999
ADAMS-JACKSON, ELIZABETH A ..... FALL RIVER, MA	02/18/1999
ARPIE, DAVID ..... STRATFORD, CT	02/18/1999
BOSACK, DOUGLAS P ..... TOLEDO, OH	02/18/1999
BOWERS, SHAWNA ..... NIANTIC, CT	02/18/1999
BRIDGES, ROBERT E III ..... BRISTOL, CT	02/18/1999
BRUNING, JEFFREY L ..... FORT BRAGG, CA	02/18/1999
BURGESS, LAWSON E ..... GREENSBORO, NC	02/18/1999
BYRD, RHONDA DIANE PARKER ..... PERKINSTON, MS	02/18/1999
CAMARILLO, JOSEPH L ..... PALMDALE, CA	02/18/1999
CUNNINGHAM, IRENE PAYNE ABERDEEN, MS	02/18/1999
DARDEN, SONDRA JAMES .... CLEVELAND, MS	02/18/1999
DOHERTY, HUGH K ..... CENTERVILLE, MA	02/18/1999
DORAN, DIANE ..... CARSON CITY, NV	02/18/1999
DOWNING, DONNA ..... FLORENCE, MS	02/18/1999
DRAUGHN, CAROL ..... PETAL, MS	02/18/1999
DREZGA, GRMISLAV GREGORY ..... MAMARONECK, NY	02/18/1999
EASTMAN, GARY ..... BRATTLEBORO, VT	02/18/1999
EDU, JOSEPHINE KEREZU .... SAN LEANDRO, CA	02/18/1999
ENGELHARDT, DAVID STEWART ..... SIESTA KEY, FL	02/18/1999
FAULKNER, TWYLA M ..... SPRINGFIELD, IL	02/18/1999
FEIN, GERALD ..... PALOS VERDE, CA	02/18/1999
FELDMAN, ROSS ..... MALIBU, CA	02/18/1999
FISCHER, PETER B ..... BELLFLOWER, CA	02/18/1999
FRAIOLI, JOSEPH ..... MALDEN, MA	02/18/1999
FREEDMAN, ROBERT A ..... MEDFORD, MA	02/18/1999
FRIEND, JOHN CHRISTOPER CHINO HILLS, CA	02/18/1999
GANEM, SUZANNE ..... RAYNHAM, MA	02/18/1999
GORE, TREY H	02/18/1999

Subject city, state	Effective date
BRANDON, MS	
GUILLORY, MARY DANIELLE MCCOMB, MS	02/18/1999
HEARD, DAN BRANDON, MS	02/18/1999
HINOJOS, BLASA V ALPINE, TX	02/18/1999
HOTZ, LINDA A ENCINITAS, CA	02/18/1999
IKPOH, EMMANUEL SOUTH BEND, IN	02/18/1999
JAFFE, CAROL ANN TALLAHASSEE, FL	02/18/1999
JAMES, EDWARD V RANCHO MIRAGE, CA	02/18/1999
JOLLY, THERESA A WEST POINT, MS	02/18/1999
KENT, MARY ELLEN WACO, TX	02/18/1999
LAVIZZO, SIMONE MARIE W LANCASTER, CA	02/18/1999
LEWIS, LOWIE N DES PLAINES, IL	02/18/1999
LITTLEFIELD, KATHLEEN B SKOWHEGAN, ME	02/18/1999
MALLORY, TERRI LATRICE PETERSBURG, VA	02/18/1999
MALONEY, ALICE T MOSELLE, MS	02/18/1999
MARSHALL, JAMES A ARCADIA, CA	02/18/1999
MASSEY, MARGARET W VICKSBURG, MS	02/18/1999
MATYASOVSZKY, ELEANOR STRATFORD, CT	02/18/1999
MCRANEY, RHONDA M JACKSON, MS	02/18/1999
MEEKS, JUDITH A LAKEWOOD, OH	02/18/1999
MURRAY, LINDA M SPRINGFIELD, MA	02/18/1999
OLSON, ANDREA KENNEDY BADEN, PA	02/18/1999
PERL, ALAN NORFOLK, MA	02/18/1999
RANDALL, WARREN AVON, CT	02/18/1999
REVILLE, REBECCA SACRAMENTO, CA	02/18/1999
RICE, GREGORY LAS VEGAS, NV	02/18/1999
ROSE, PERRY L DEERFIELD, IL	02/18/1999
SANCHEZ, JOSE LUIS SAN DIEGO, CA	02/18/1999
SANDERS, DONALD PACOIMA, CA	02/18/1999
SARTOR, BRIAN LEE DENISON, TX	02/18/1999
SCOTTON, THOMAS F PASADENA, CA	02/18/1999
SEITZINGER, LEIF BRISTOL, RI	02/18/1999
SEPKA, TERESA DURHAM, NC	02/18/1999
SMITH, TERESA TAYLOR NEWTON, MS	02/18/1999
SOARES, JOHN ALLEN FRESNO, CA	02/18/1999
STAFFORD, JOAN C HIGH POINT, NC	02/18/1999
STARK, ROY COSBY LAS VEGAS, NV	02/18/1999
STRONG, JOHN WATERLOO, IL	02/18/1999
TA, QUOC-HUAN V SAN FRANCISCO, CA	02/18/1999
TRUTA, MARIANNE P BURLINGAME, CA	02/18/1999
WARFIELD, JULIAN N HOLLYWOOD, CA	02/18/1999
WRIGHT, JONATHAN W CHICAGO, IL	02/18/1999
Federal/State Exclusion/Suspension	
HOFFMAN, GREGORY SOUTH PORTLAND, ME	02/18/1999
JEWETT, PAMELA B BRUNSWICK, ME	02/18/1999
Fraud/Kickbacks	
FRASCA, CLIFF TOMS RIVER, NJ	06/22/1998
GENESIS MEDICAL SERVICES, INC MURRYSVILLE, PA	10/05/1998
JOHNSON, JOHN F MURRYSVILLE, PA	09/01/1998
MORIARITY, JACK TOMS RIVER, NJ	06/22/1998
Owned/Controlled by Convicted/Excluded	
CENTURY MEDICAL SERVICES, CORP MIAMI, FL	02/18/1999
MEDI-SERV MARIETTA, GA	02/18/1999
WE CARE FAMILY SERVICES, INC MABLETON, GA	02/18/1999
Default on Heal Loan	
AMOS, WILLIAM E III BRIDGEVILLE, PA	02/18/1999
ANDERSON, RONALD D CUSHING, OK	02/18/1999
ARMSTRONG, DANIEL J BEVERLY HILLS, CA	02/18/1999
ARNESEN, DOUGLAS W ATASCADERO, CA	02/18/1999
AUSMUS, DANIEL G BIG BEAR LAKE, CA	02/18/1999
BATH, SUSAN M GARDNERVILLE, NV	02/18/1999
CARLSON, ERIC DOUGLAS SIERRA MADRE, CA	02/18/1999
DAVID, LEOPOLDO Q JR LUMBERTON, MS	02/18/1999
EDWARDS, GREGORY C LAS VEGAS, NV	02/18/1999
GRISCHY, VALERIE S SAN DIEGO, CA	02/18/1999
JERMANY, MERTINE R ELLICOTT CITY, MD	02/18/1999
KAMMERMAN, DAVID GLOVERSVILLE, NY	02/18/1999
MORRIS, BARRY W SAN JOSE, CA	02/18/1999
NGUYEN, HELENE H PORTLAND, OR	02/18/1999
PERILLO, DAVID J NEWARK, NY	02/18/1999
RAJU, PRABHA R BURTON, MI	02/18/1999
ROBINSON, FRANCIS T JR VENTURA, CA	02/18/1999
SAID, SAED M UNIONVILLE, CT	02/18/1999
SMITH, BARBARA A SAN DIEGO, CA	02/18/1999
WALKER, DAVID B SIOUX CITY, IA	02/18/1999
WARD, DAVID C BALTIMORE, MD	02/18/1999
Settlement Agreement	
WHITEHEAD, ESSIE ATLANTA, GA	12/06/1998
WHITEHEAD, DONALD W ATLANTA, GA	11/06/1998

Dated: February 9, 1999.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 99–4152 Filed 2–18–99; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Mentored Patient Oriented Research Career Development Award (PA–98–052); Mid-Career Investigator Award in Patient-Oriented Research (PA–98–053).

Date: March 2–3, 1999.

Time: March 12, 1999, 7:00 PM to 9:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Time: March 3, 1999, 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Diane M. Reid, MD, NIH, NHLBI, DEA, Two Rockledge Center, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, (301) 435–0277.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Collaborative Research on Bronco-Pulmonary Dysplasia.

Date: March 3, 1999.

Time: 8:00 AM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anne P. Clark, PHD, NIH, NHLBI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, (301) 435–0280.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, RFA–OD–007 ''NIH Wide Clinical Research Curriculum''.

Date: March 17–19, 1999.

Time: March 17, 1999, 7:00 PM to 10:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Time: March 18, 1999, 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Time: March 19, 1999, 8:00 AM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Diane M. Reid, MD, NIH, NHLBI, DEA, Two Rockledge Center, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, (301) 435–0277.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 10, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–4097 Filed 2–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: March 26, 1999.

Time: 9:00 a.m. to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd, Suite 400C, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: George M. Barnas, PHD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities/NIDCD, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS).

Dated: February 12, 1999.

LaVerne Y. Springfield,

Committee Management Officer, NIH.

[FR Doc. 99–4099 Filed 2–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDCD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDCD.

Date: March 25, 1999.

Open: 2:00 PM to 3:00 PM.

Agenda: Report from the Scientific Director, Division of Intramural Research.

Place: National Institutes of Health, 9000 Wisconsin Avenue, Building 31, Room 3C05, Bethesda, MD 20892.

Closed: 3:00 PM to 3:30 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Wisconsin Avenue, Building 31, Room 3C05, Bethesda, MD 20892.

Contact Person: Robert J. Wenthold, PHD, Acting Director, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, 5 Research Court, Room 2B28, Rockville, MD 20852, 301–402–2829.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 12, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–4100 Filed 2–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Advanced Research Cooperation in Environmental Sciences.

Date: March 23–25, 1999.

Time: March 23, 1999, 7:30 PM to 9:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hawthorn Suites Hotel, 300 Meredith Drive, Durham, NC 27713.

Time: March 24, 1999, 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hawthorn Suites Hotel, 300 Meredith Drive, Durham, NC 27713.

Time: March 25, 1999, 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hawthorn Suites Hotel, 300 Meredith Drive, Durham, NC 27713.

Contact Person: David Brown, MPH, Nat'l Institute of Environmental Health Science, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Program Project: Interdisciplinary Studies in Reproductive Toxicology & Epidemiology.

Date: March 25, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Nat. Institute of Environmental Health Sciences, South Campus, Building 101 Conference Room, Research Triangle Park, NC 27709.

Contact Person: Ethel B. Jackson, DDS, Chief, Scientific Review Branch, Nat'l Institute of Environmental Health Sciences, PO Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–7826.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: February 11, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–4101 Filed 2–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Individual National Research Service Award Applications.

Date: March 4, 1999.

Time: 1:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Building 45, Room 3AN–18B, MD 20892, (Telephone Conference Call).

Contact Person: Mary J. Stephens-Frazier, PHD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: February 11, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–4102 Filed 2–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group, Epidemiology and Disease Control Subcommittee 1.

Date: February 17–19, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Ramada, 8400 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: J. Scott Osborne, PHD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–SB (1).

Date: February 19, 1999.

Time: 8:00 AM to 9:00 AM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Ave., Washington, DC 20007.

Contact Person: Teresa Nesbitt, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1172.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biochemical Sciences Initial Review Group, Pathobiochemistry Study Section.

Date: February 19–20, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Pacific Shore Hotel, 1819 Ocean Avenue, Santa Monica, CA 90401.

Contact Person: Zakir Bengali, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 19, 1999.
Time: 11:00 AM to 12:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mushtaq A. Khan, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7818, Bethesda, MD 20892, (301) 435–1778, khanm@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–SSS–W (20).
Date: February 21–23, 1999.
Time: 5:00 PM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.
Contact Person: Dharam S. Dhindsa, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Initial Review Group Reproductive Endocrinology Study Section.
Date: February 21–23, 1999.
Time: 6:00 PM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
Contact Person: Abubakar A. Shaikh, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Orthopedics and Musculoskeletal Study Section.
Date: February 22–23, 1999.
Time: 8:00 AM to 4:30 PM.
Agenda: To review and evaluate grant applications.
Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.
Contact Person: Daniel F. McDonald, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health Promotion and Disease Prevention Initial Group, Alcohol and Toxicology Subcommittee 3.
Date: February 22–23, 1999.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Washington Monarch Hotel, 2401 M Street, NW, Washington, DC 20037.
Contact Person: Christine Melchior, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7816, Bethesda, MD 20892, (301) 435–1713.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Initial Review Group, General Medicine A Subcommittee 2.
Date: February 22–23, 1999.
Time: 8:00 AM to 6:00 PM.
Agenda: To review and evaluate grant applications.
Place: Wymdham Hotel, 250 Racquette Club Rd., Fort Lauderdale, FL 33326.
Contact Person: Mushtaq A. Khan, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4125, MSC 7818, Bethesda, MD 20892, (301) 435–1778, khanm@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 22–23, 1999.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: ANA Hotel, 2401 M Street, NW, Washington, DC 20037.
Contact Person: Christine Melchior, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7816, Bethesda, MD 20892, (301) 435–1713.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Experimental Virology Study Section.
Date: February 22–23, 1999.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.
Contact Person: Garrett V. Keefer, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1152.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biochemical Sciences Initial Review Group, Medical Biochemistry Study Section.
Date: February 22–23, 1999.
Time: 8:30 AM TO 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Ramada, Embassy III Room, 8400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Alexander S. Liacouras, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7842, Bethesda, MD 20892, (301) 435–1740.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Initial Review Group, Biochemical Endocrinology Study Section.
Date: February 22–23, 1999.
Time: 8:30 AM to 12:00 PM.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.
Contact Person: Michael Knecht, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, General Medicine A Subcommittee 1.
Date: February 22–23, 1999.
Time: 8:30 AM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Harold M. Davidson, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Oral Biology and Medicine Subcommittee 2.
Date: February 22–23, 1999.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Old Town Alexandria, Alexandria, VA 22314.
Contact Person: Priscilla Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104,

MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 22, 1999.
Time: 1:00 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Old Town Alexandra, Alexandria, VA 22314.
Contact Person: Jo Pelham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 23–24, 1999.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.
Contact Person: Syed Husain, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group, Pathology A Study Section.
Date: February 23–24, 1999.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Radisson Hotel and Suites on the Plaza, 125 Washington Avenue, Sante Fe, NM 87501.
Contact Person: Larry Pinkus, PHD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 23–24, 1999.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 1489 Jefferson Davis Hwy, Arlington, VA 22202.
Contact Person: Joanne T. Fujii, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, fujiij@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Initial Review Group, Radiation Study Section.
Date: February 23–25, 1999.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Fechin Inn, 227 Paseo Del Pueble Norte, Taos, NM 87571.
Contact Person: Paul K. Strudler, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892 (301) 435–1716.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 23, 1999.
Time: 1:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Eugene Vigil, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–MDCN–6.
Date: February 24–25, 1999.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites Hotel-Harbor Building, 1000 29th Street NW, Washington, DC 20007.
Contact Person: Carole L. Jelsema, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, (301) 435–1249, jelsemac@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group, Cardiovascular Study Section.
Date: February 24–25, 1999.
Time: 8:00 AM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn-Rockville, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Gordon L. Johnson, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Initial Review Group, Experimental Therapeutics Subcommittee 2.
Date: February 24–26, 1999.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.
Contact Person: Marcia Litwack, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Initial Review Group, Lung Biology and Pathology Study Section.
Date: February 24–25, 1999.
Time: 8:00 AM to 5:30 PM.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Russell T. Dowell, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Microbial Physiology and Genetics Subcommittee 2.
Date: February 24–25, 1999.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Rona L. Hirschberg, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 10, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–4098 Filed 2–18–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control and Prevention, Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 64 FR 5308–5310, dated February 3, 1998) is amended to reflect the (1) establishment of the Facilities Engineering Office, the Facilities Planning and Project Management Office, and the Design and Construction Management Office, and (2) the abolishment of the Engineering Services Office within the Office of Program Support, Centers for Disease Control and Prevention (CDC).

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in their entirety the title and functional statements for the *Engineering Services Office (CA52), Office of Program Support (CA5),* and insert the following:

Facilities Engineering Office CA52). (1) Operates, maintains, repairs, and modifies CDC's Atlanta area plant facilities and other designated CDC facilities throughout the United States and Puerto Rico and conducts a maintenance and repair program for CDC's program support equipment; (2) develops services for new, improved, and modified equipment to meet program needs; (3) provides technical assistance, reviews maintenance and operation programs, and recommends appropriate action for all Atlanta area facilities and other designated CDC facilities throughout the United States and Puerto Rico; (4) provides recommendations, priorities, and services for new, improved, or modified equipment to meet program needs; (5) provides maintenance and operation of the central energy plant including structures, utilities production and utilities distribution systems and equipment; (6) conducts a program of custodial services, waste disposal, incinerations, and disposal of biological waste and other building services at all CDC Atlanta area facilities and other designated CDC facilities throughout the United States and Puerto Rico; (7) provides landscape development, repair, and maintenance at all CDC Atlanta area facilities and other designated CDC facilities throughout the United States and Puerto Rico; (8) provides hauling and moving services for CDC in the Atlanta area; (9) provides insect and rodent control services for CDC in Atlanta area facilities; (10) develops required contractual services and provides supervision for work performed in these areas; (11) establishes and maintains a computerized system for maintenance services and for stocking and ordering supplies and replacement parts; (12) provides for pick-up and delivery of supplies and replacement parts to work sites; (13) maintains adequate stock levels of supplies and replacement parts; (14) as needed, prepares designs and contract specifications and coordinates completion of contract maintenance projects; (15) manages CDC's Energy Conservation Program for all CDC facilities; (16) reviews all construction documents for energy conservation goals and compliance with applicable CDC construction standards; (17) participates on all core teams and value engineering teams; (18) provides maintenance and inspection for fire extinguishers and fire sprinkler systems; (19) provides services for the procurement of natural gas; (20) develops and maintains a standard equipment list for all CDC facilities; (21) assists the Design and Construction Management Office and the Facilities Planning and Project Management Office with facility-related issues.

After the title and functional statement for the *Information Resources Management Office (CA54),* insert the following:

Design and Construction Management Office (CA55). (1) Develops architectural designs and engineering specifications for construction of new facilities and major modifications and renovations to CDC-owned facilities; (2) provides architectural and engineering technical services and consultation on facility project designs; (3) provides in-house construction administration services for CDC-owned facilities in Atlanta; (4) manages interior design and furniture standards; (5) coordinates development and determination of best methods and means for the planning and conduct of assigned projects, including selection of resources.

Facilities Planning and Project Management Office (CA56). (1) Provides professional architectural/engineering capabilities and technical and administrative project support to CDC and the CIOs for renovations and improvements to CDC-owned facilities and construction of new facilities; (2) prioritizes design and construction needs for requested CIO projects; (3) manages and administers the CDC renovations and improvement (R&I) budget; (4) develops project management requirements (including determination of methods and means of project completion and selection of resources), funding sources, and budgets; (5) serves as the point of contact with CIOs for administration and coordination of all facilities-related needs, i.e., project planning, evaluation, estimation, and tracking.

Dated: February 9, 1999.

Jeffrey P. Koplan,

Director.

[FR Doc. 99–4095 Filed 2–18–99; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–07]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The notice that identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless, and generally published every Friday will be published on Monday, February 22, 1999.

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 Steward B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD publishes weekly a notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. Because of the

Federal holiday on Monday, February 15, 1999, this notice, generally published every Friday, will be published on Monday, February 22, 1999.

Dated: February 16, 1999.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 99–4124 Filed 2–18–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–007653

Applicant: International Center for Gibbon Studies, Santa Clarita, CA

The applicant requests a permit to import two male and two female wild caught hoolock gibbons (*Hylobates hoolock*) from Yangon Zoological Gardens, Myanmar, for the purpose of enhancement of the survival of the species through conservation education, propagation, and scientific research.

PRT–008037

Applicant: John M. Saba, Jr., Sarasota, FL

The applicant requests a permit to import sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

PRT–007980

Applicant: Bodega Bay Institute, Berkeley, CA

The applicant requests a permit to import biological samples salvaged from infertile eggs, unhatched eggs, and dead nestlings of the Bermuda petrel (*Pterodroma cahow*) by representatives of the government of Bermuda for the purpose of scientific research on marine contaminants affecting the recovery of the species. This notice covers activities by the applicant for a period of 5 years.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following applications for permits to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–843163

Applicant: Eugene Giscombe, Amityville, NY

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

The following applicants have each requested a permit to import a sport-hunted polar bear (*Ursus maritimus*) from the Lancaster Sound or Norwegian Bay populations, Northwest Territories, Canada for personal use.

Applicant/Address	PRT-
Lancaster Sound Populations	
Henry Anderson III, Tulare, CA	004877
Harold Armstrong, Modesto, CA	844554
Rex Baker, Marietta, GA	007078
Kenneth Lee Barr, Kelseyville, CA	004730
Lee Bernson, Traverse City, MI	006591
Dort S. Bigg, Manchester, NH	004451
Johnny Bliznak, Abilene, TX	004455
Don Brown, Silverton, TX	004875
Dennis Brownley, Bulverde, TX	003835
Dennis Danner, Spencerville, MD	007279
James DiFrancia, Yorktown Heights, NY	843640
James Hugh Doyle, Kenai, AK	002160
Roger Ebnet, Avon, MN	003974
Lawrence Epping, Salem, OR	004769
Robert B. Fay, Allison Park, PA	841665
Gary Joal Ganz, Beverly Shores, IN	844917
Robert Gegenheimer, Wortham, TX	843446
Val Goldthwaite, Brielle, NJ	842041
John Grabenstein, Atlanta, GA	004452
Kenneth Greg, Emporium, PA	003421
Leonard Guldman, Aurora, CO	007981
William Haley, Mead, WA	004879
Irving Hansen, Wauwatosa, WI	841144
Arthur Kobrine, Potomac, MD	004766
Steve Kobrine, Potomac, MD	006302
George Koebel, Waleska, GA	007081
Thomas LaBarge, Medford, WI	003976
Harold Landis, Silver Spring, MD	007278
Michael Langer, Burlington, CT	843641
Peter Leach, Kansasville, WI	842321
Leo Mack, Jr., Tyler, TX	005290
Gerald Medlin, Sullivan, MO	842843
Grant Medlin, Bourbon, MO	840855
Greg Medlin, Omaha, NE	843166
Jeffrey Miller, Omaha, NE	004771
Willis Moore III, Beverly, NJ	004876
Michael P. O'Neill, Centre Hall, PA	003414
Joe Baker Owen, Abilene, TX	003075
Walter Prothero, Eden, UT	004450
Arlo Reynolds, Stoneboro, PA	004871
Jerry Rubenstein, Bellaire, TX	004001
Larry Saltzgiver, Hanover, PA	007670
Danny Sardella, Greensboro, GA	004449
Pat Short, Waco, TX	007671
Daniel Smith, San Jose, CA	004453
Tommy Smith, Salisbury, NC	842044
Kirk Sorensen, Stillwater, MN	843725
Gregory Stafford, Chelan, WA	004925
Daniel Stiehl, Bloomer, WI	843164
R.R. Tipton, Myrtle Beach, SC	841984
Ken Trudell, DePere, WI	004729
Carl Ulberg, Grandville, MI	003949
James D. Verbugge, Grand Rapids, MI	003975
John F. Walchli, Hermiston, OR	004732
Gary Waterhouse, Chetck, WI	001500
Dean Wilkie, Lenoir, NC	840282
William Wilson, Beaver Dam, WI	004767
Robert Wood, San Francisco, CA	006301
Norwegian Bay Populations	
Ivan McDaniel, John Day, OR	003659

Written data or comments, requests for copies of the complete applications, or requests for a public hearing on any of these applications should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: February 16, 1999.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–4187 Filed 2–18–99; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–09–1320–01; WYW147809]

Notice of Invitation for Coal Exploration License; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of February 25, 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.A. 201(b), and to the regulations adopted as 43 CFR, Subpart 3410, all interested parties are hereby invited to participate with Antelope Coal Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell and Converse Counties, WY:

T. 41 N., R. 71 W., 6th P.M., Wyoming
Sec. 14: Lot 5;
Sec. 15: Lots 7, 8, 15, 16;
Sec. 22: Lots 3, 9, 10, 12;
Sec. 23: Lots 5, 6, 13;
Sec. 25: Lots 11, 14;
Sec. 26: Lots 2, 4, 5, 7, 12, 13;
Sec. 27: Lots 1, 2, 14.
Containing 903.36 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to assess overburden quality.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYM147809): Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, Bureau of Land Management, Casper Field Office, 1701 East ''E'' Street, Casper, WY 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in ''The News-Record'' of Gillette, WY, once each week for two consecutive weeks beginning the week of February 15, 1999, and in the **Federal Register.** Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Antelope Coal Company no later than thirty days after publication of this invitation in the **Federal Register.** The written notice should be sent to the following addresses: Antelope Coal Company, Attn: Patrick J. Baumann, Caller Box 3008, Gillette, WY 82717, and the Bureau of Land Management, Wyoming State Office, Minerals and Lands Authorization Group, Attn: Mavis Love, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR, Section 3410.2–1(c)(1).

Dated: February 9, 1999.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 99–3610 Filed 2–18–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–09–1220–00]

Imperial Gold Mine Project; National Advisory Council on Historic Preservation; Public Hearing

SUMMARY: Notice is hereby given, in accordance with Pub. Ls. 92–463 and 94–579, that the National Advisory Council on Historic Preservation and the Bureau of Land Management will hold a formal public hearing to gather comments and hear concerns regarding the proposed Imperial Gold Mine Project from 2 p.m. to 5 p.m. and 6:30 p.m. to 9 p.m. on Thursday, March 11, 1999. The hearing will be held in the Convention Center at the Barbara Worth Resort, located at 2050 Country Club Drive in Holtville, California.

All public comments will be recorded, and the transcript will become part of the record. Speaking time will be divided equally among those who register to make public comments.

The proposed Imperial Project, an open pit, heap leach gold mine, would be located in eastern Imperial County, approximately 45 miles northeast of El Centro and 20 miles northwest of Yuma, Arizona. The proposed project area would encompass approximately 1,625 acres of public lands administered by the BLM, of which 1,392 acres would be disturbed.

The proposed Imperial Project would be operated by the Glamis Imperial Corporation, formerly known as Chemgold Corporation. Approximately 150 million tons or ore and 300 million tons of waste rock would be mined from three open pits during the operation of the mine, which would conclude in the year 2018.

The site for the proposed mining project is eligible for the National Register of Historic Places. Archaeological and cultural inventories indicate the site has scientifically important archaeological, cultural, and spiritual value. The proposed mine could adversely effect or part of the land.

The Bureau of Land Management and the County of Imperial released a joint draft environmental impact statement/environmental impact report for the proposed project on December 8, 1997. Public comment on the draft ended April 13, 1998.

FOR FURTHER INFORMATION CONTACT: Carole Levitzky at (909) 697–5217 or Doran Sanchez at (909) 697–5220, BLM California Desert District Public Affairs.

Dated: February 12, 1999.

Carole Levitzky,

Assistant District Manager, External Affairs.

[FR Doc. 99–4094 Filed 2–18–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management, Interior

[CA–920–1310–03; CACA 35881]

California: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease CACA 35881 for lands in Kings County, California, was timely filed and was accompanied by all required rentals and royalties accruing from November 1, 1998, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to the amended lease terms of rentals and royalties at the rate of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease CACA 35881 effective November 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Bonnie Edgerly, Land Law Examiner, California State Office (916) 978–4370.

Dated: February 12, 1999.

Leroy M. Mohorich,

Chief, Branch of Energy Mineral Science, and Adjudication.

[FR Doc. 99–4149 Filed 2–18–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–040–09–1150–00]; UTU–75173

Realty Action; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Recreation and Public Purposes (R&PP) Act Classification; Utah.

SUMMARY: The following described public lands in Iron County, Utah have been examined and found suitable for conveyance under the provisions of the Recreation and Public Purposes Amendment Act of 1988 (Pub. L. 100–648). The land to be conveyed and the proposed patentee are as follows:

Patentee: Iron County, Utah.

Location: Salt Lake Meridian, Utah, Township 35 South, Range 12 West, Section 4, S½SW¼, SW¼SE¼; and Section 9, NE¼NW¼NE¼, NW¼NW¼NE¼, SW¼NW¼NE¼, NW¼SE¼NW¼NE¼, N½NW¼, N½S½NW¼, NW¼NW¼SW¼NE, containing 275 acres.

These lands are hereby segregated from all forms of appropriation under the public land laws, including the mining laws.

Iron County proposes to use the land for the development of a public shooting range. The land is not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions, and reservations.

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. The Secretary of Interior reserves the right to determine whether such mining and removal of minerals will interfere with the development, operation, and maintenance of the shooting range.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The conveyance will be subject to all valid existing rights.

4. The patentees assume all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly to the disposal of solid waste on, or the release of hazardous substances from the above listed tracts, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

5. Title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that the patentee has not substantially developed the lands in accordance with the approved plan of development on or before the date five years after the date of conveyance. No portion of the land shall under any circumstance revert to the United States if any such portion has been used for solid waste disposal, or for any other purpose which may result in the disposal, placement, or release of any hazardous substance.

6. If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon.

DATES: Interested persons may submit comments regarding the proposed conveyance of the land to the District Manager, Cedar City District Office, 176 D.L. Sargent Drive, Cedar City, Utah 84720. Comments will be accepted until April 5, 1999.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the construction of a shooting range.

Any adverse comments will be reviewed by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this notice will become the final determination of the Department of Interior on April 20, 1999.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Cedar City Field Office by contacting Ervin Larsen, 176 East D.L. Sargent Drive, Cedar City, Utah 84720, or telephone (435) 865–3081.

Dated: February 12, 1999.

Paul W. Swapp,

Acting District Manager.

[FR Doc. 99–4144 Filed 2–18–99; 8:45 am]

BILLING CODE 4310–09–M

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statements; Availability, Etc. Stones River National Battlefield, TN

AGENCY: National Park Service, Stones River National Battlefield, Tennessee, DOI.

ACTION: Notice of Availability for Final General Management Plan/Development Concept Plan/Environmental Impact Statement for Stones River National Battlefield.

SUMMARY: This Final General Management Plan/Development Concept Plan/Environmental Impact Statement (FGMP/DCP/EIS) describes three alternatives for cultural and natural resource protection and management, visitor use and interpretation and related facilities development at Stones River National Battlefield. Alternative 1, the National Park Service's (NPS) proposed action, would preserve a larger area of the battlefield that has retained historic landscape integrity. It would also improve interpretation and the ability of the visitor to experience a ''sense of place'' within the battlefield. This would be accomplished by protection of more resources through boundary expansion and land acquisition, new exhibits in the visitor center, establishment of a new automobile tour route within the expanded boundary, and new interpretive wayside exhibits. Alternative 2 would improve interpretation and the visitor experience within the authorized boundary of the park. This would be accomplished by providing new exhibits in the visitor center, establishing a new automobile tour route within the park, and providing new wayside exhibits. There would be no change in the authorized boundary. Alternative 3 (continuation of existing conditions) would represent no significant change in interpretation and the way the park is being managed, and no change in the authorized park boundary. Under all alternatives, there would be an emphasis on working with local agencies, groups, and landowners to preserve and protect lands that retain historic landscape integrity within the

original battlefield, but outside the park boundary. Environmental impacts that would result from implementation of the alternatives are addressed in the document. Impact topics include cultural and natural resources, interpretation and visitor use, socioeconomic environment, and NPS operations. Measures that would be taken to mitigate impacts are also described in the FEIS.

Availability

The FEIS is being mailed to agencies, organizations, and individuals on the park's mailing list, and is on display at Linebaugh Public Library, 205 West Vine Street, Murfreesboro, Tennessee 37130, and at the following location. A limited number of copies are available from the Superintendent at the Stones River National Battlefield Visitor Center. Superintendent, Stones River National Battlefield, 3501 Old Nashville Highway, Murfreesboro, Tennessee 37129, Telephone (615) 893–9501.

No sooner than 30 days from the appearance of this notice in the Federal Register, a Record of Decision will be signed that will document NPS approval of the General Management Plan for Stones River National Battlefield, and identify the selected action from the alternatives presented in the FEIS.

Dated: February 5, 1999.

Daniel Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 99–4078 Filed 2–18–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to prepare a Draft Environmental Impact Statement on the General Management Plan for Fort Frederica National Monument, Georgia

SUMMARY: The National Park Service will prepare an Environmental Impact Statement (EIS) to accompany its General Management Plan (GMP) for Fort Frederica National Monument. The Service invites suggestions for issues to be considered and ideas for resolving the issues. Public scoping meetings will be held in the local area to receive input from interest parties on issues, concerns, and suggestions for resolving these issues and concerns. The comment period for each of these meetings will be announced at the meetings and will be published on the General Management Plan web site for Fort Frederica at http://www.nps.gov/fofr.

DATES: Locations, dates, and times of public scoping meetings will be published in local newspapers and may also be obtained by calling the monument. This information will also be published on the General Management Plan web site for Fort Frederica.

ADDRESSES: Scoping suggestions should be submitted to the following address to ensure adequate consideration by the Service. Superintendent, Fort Frederica National Monument, Route 9, Box 286–C, St. Simons Island, Georgia 31522, Telephone: (912) 638–3630.

SUPPLEMENTARY INFORMATION: The National Park Service has announced that an EIS on GMPs will be prepared for all park units. To comply with this policy, a formal scoping period is announced.

Comments are invited on any issue believed to be relevant to monument management and should be submitted to the Superintendent whose address is given above. Public scoping meetings will be held in the local area and the dates and times may be obtained from local newspapers or by calling the monument. We urge that comments be made in writing. Issues may be suggested for the Service to consider during its planning as well as suggestions for resolution. Issues currently being considered include the use of 28 acres of land acquired in 1994, potential acquisition and protection of the Frederica period house site believed to be Oglethorpe's home, coping with tremendous residential development around the park, and how to best fulfill the park's interpretive mission. Central to these issues is the determination of the monument's mission—its purpose and significance. The plan will identify desired conditions for resources and visitor experiences for various management units within the monument. A draft GMP/EIS will be prepared and presented to the public for review and comment followed by preparation and availability of the final GMP/EIS.

Dated: February 5, 1999.

John Tucker,

Regional Director, Southeast Region.

[FR Doc. 99–4079 Filed 2–18–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Management Plan/Special Resource Study; Environmental Impact Statement: Shenandoah Valley Battlefields National Historic District, VA; Notice of Intent

AGENCIES: Shenandoah Valley Battlefields National Historic District Commission and National Park Service, Department of the Interior.

In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969, the Shenandoah Valley Battlefields National Historic District Commission (Commission) and the National Park Service (NPS) are cooperating to prepare an Environmental Impact Statement (EIS) to assess the impacts of alternative management strategies for a Management Plan and Special Resource Study for the Shenandoah Valley Battlefields National Historic District (National Historic District), Virginia.

The Shenandoah Valley Battlefields National Historic District and Commission Act of 1996 (Public Law 104–333) requires the Commission, with the assistance of the National Park Service, to prepare the Management Plan. The Management Plan/EIS will evaluate a range of alternatives which address cultural and natural resource protection, visitor use, and socioeconomic concerns. The Management Plan/EIS will also incorporate a NPS Special Resource Study to examine the possibility of creating a new unit of the National Park system.

The Commission and the NPS will hold several scoping meetings in late February 1999, and early March 1999, to identify issues to be addressed in the Management Plan/Special Resource Study/EIS. The draft document is expected to be completed for public review by the summer of 2000. After public and interagency review of the draft document, comments will be considered and a final EIS will be prepared for release by the fall of 2000, which will be followed by a record-of-decision. The responsible officials are the chairman of the Commission and the Northeast Regional Director of the NPS.

For further information and meeting times and locations, contact Howard Kittell, Executive Director, Shenandoah Valley Battlefields National Historic District Commission, P.O. Box 897, New Market, VA 22844 or Jeff Reinbold, Shenandoah Valley Battlefields Project Coordinator, National Park Service, P.O. Box 897, New Market, VA 22844. The phone number for both contacts is (540) 740–4545.

Dated: February 14, 1999.

Carrington Williams,

Chairman, Shenandoah Valley Battlefields National Historic District Commission.

February 12, 1999.

Leonard C. Emerson,

Assistant Regional Director, Human Resources, Northeast Region, National Park Service.

[FR Doc. 99–4122 Filed 2–18–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

AGENCY: National Park Service, DOI.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Aniakchak National Monument and the Chairperson of the Subsistence Resource Commission for Aniakchak National Monument announce a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order. (Chairman)

(2) SRC Roll call; confirmation of quorum. (Chairman)

(3) Welcome and introductions. (Public, agency staff, others)

(4) Review and adopt agenda. (SRC)

(5) Review and adopt minutes from the October 1998 meeting.

(6) Review commission's role and purpose.

(7) Status of commission membership.

(8) Public and agency comments.

(9) Old business:

a. 1998 NPS/SRC Chairs Workshop Report.

b. Status of Aniakchak National Preserve hunting guide prospectus.

c. Aniakchak National Monument and Preserve Wildlife Report.

d. Review 1998 NPS/Secretary's response to final subsistence hunting program recommendations.

e. Implementation of approved hunting program recommendations.

f. Status of draft subsistence hunting program recommendations.

(1) 97–1: Establish a one-year residency requirement for the resident zone communities.

(2) 97–2: Establish a special registration permit requirement for non-subsistence (sport) hunting, trapping, and fishing activities within the Aniakchak National Preserve.

(3) Designate Ivanoff Bay and Perryville as resident zone communities.

(10) New business:

a. Federal Subsistence Program update.

(1) Bristol Bay Regional Council report.

(2) Review Unit 9E proposals/special actions.

(3) Federal Subsistence Fisheries update.

b. ORV C&T Team Progress Report (Coordinator).

c. Draft Aniakchak Subsistence Management Plan.

(11) Public and agency comments.

(12) SRC work session (draft proposals, letters, and recommendations).

(13) Set time and place of next SRC meeting.

(14) Adjournment.

DATES: The meeting will begin at 8 a.m. on Tuesday, March 2, 1999, and conclude at approximately 7 p.m. The meeting will reconvene at 8 a.m. on Wednesday, March 3, 1999, and adjourn approximately 1 p.m.

LOCATION: The meeting location is: Community Subsistence Building, Chignik Lake, Alaska.

FOR FURTHER INFORMATION CONTACT: Deb Liggett, Acting Superintendent, or Donald Mile, Resource Specialist, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613. Phone (907) 246–3305.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Robert D. Barbee,

Regional Director.

[FR Doc. 99–4077 Filed 2–18–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Tracy Fish Facility Improvement Program, New Tracy Fish Facility, Central Valley Project, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare environmental documents (environmental assessment and initial study or environmental impact statement and environmental impact report) and notice of public meetings.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) and Public Resources Code, Sections 21000–21178.1 of the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation), the lead Federal agency, and the California Department of Water Resources (DWR), the lead State agency, propose to prepare environmental documents for the purpose of constructing and testing new fish screens and salvage facilities associated with a new Tracy Fish Facility (TFF), Central Valley Project, California. The environmental documents will evaluate the effects of the development and testing of a new TFF at or near the existing Tracy Fish Collection Facility.

A new TFF will provide timely information on critical issues related to new fish protection facilities at the State of California's diversion at Clifton Court Forebay (CCF), Tracy, and the North Delta. The project intent is to build, operate, and evaluate a best available technology facility that will screen a portion of Tracy flows until a decision is made on screening the full Tracy pumping capacity. The new facilities would screen about 2,500 cfs at an approach velocity of 0.2 fps and would meet other appropriate fish agency criteria. The facility would have the structural and operational flexibility to optimize screening operations for multiple species in the challenging south Delta environment. The old Tracy Fish Collection Facility would be improved and remain in place to screen the remainder of the flow, until a decision is made to screen the remainder of the Tracy flow at Tracy and/or the CCF.

At present, it is not clear whether the scope of the action and anticipated project impacts will require preparation of an environmental impact statement and environmental impact report (EIS/EIR) instead of an environmental assessment and initial study (EA/IS). However, to ensure the timely and appropriate level of NEPA and CEQA compliance and to limit potential future delays to the project schedule, Reclamation and the DWR are proceeding, at this time, as if the project impacts would require preparation of an EA/IS. Reclamation and the DWR will reevaluate the need for an EIS/EIR after obtaining written and oral comments on the project scope, alternatives and impacts during the scoping process. Reclamation and the DWR will publish a notice of change if, as a result of scoping, a decision is made to prepare an EIS/EIR rather than an EA/IS. However, the scoping process to be conducted will suffice for either course of action.

There are no known Indian Trust Asset or environmental justice issues associated with the proposed action.

DATES: Two scoping meetings will be held to solicit comments from interested parties to assist in determining the scope of the environmental analysis and to identify the significant issues related to this proposed action. The meeting dates are:

- Wednesday, March 17, 1999, at 8:30 a.m., in Sacramento, California
- Thursday, March 18, 1999, at 7:00 p.m., in Tracy, California

Written comments on the scope of the environmental documents should be submitted to Reclamation by April 5, 1999.

ADDRESSES: The meeting locations are:

- Sacramento—Red Lion Sacramento Inn, Comstock II Room, 1401 Arden Way, Sacramento CA 95815, (916) 922–8041
- Tracy—Veterans of Foreign Wars (VFW) Post 1537, 430 West Grantline Road, Tracy CA 95376, (209) 839–1537

Send written comments on the scope of the environmental documents to Mr. Richard Raines, Environmental Document Manager, Bureau of Reclamation, Technical Service Center, Attention: D–8210, P.O. Box 25007, Denver CO 80225–0007.

See **SUPPLEMENTARY INFORMATION** for electronic mail addresses and Internet site address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Raines, telephone: (303) 445–2237; or Ms. Lynnette Wirth, Bureau of Reclamation, Mid-Pacific Region, Public Affairs Office, Attention: MP–140, 2800 Cottage Way, Sacramento CA; telephone: (916) 978–5102. Additional information regarding the new TFF can be obtained from the Mid-Pacific Regional Office ''Grapevine'' at 1–800–742–9474.

SUPPLEMENTARY INFORMATION: The Tracy Fish Facility Improvement Program has been identifying and making physical improvements and operational changes, assessing fishery conditions, and monitoring fish salvage operations per numerous agency agreements. On October 30, 1992, Pub. L. 102–575, the Reclamation Projects Authorization and Adjustment Act of 1992, was enacted. Title 34, the Central Valley Project Improvement Act, Section 3406(b)(4), states in part that the Secretary of the Interior will ''develop and implement a program to mitigate for fishery impacts associated with operations of the Tracy Pumping Plant. Such a program shall include, but not be limited to, improvement or replacement of the fish screens and fish recovery facilities and practices associated with the Tracy Pumping Plant.''

To significantly improve the Tracy Fish Collection Facility, new approaches and development and experimentation of new technologies will be required. Importantly, improvements must be made while not threatening the existing contracted water deliveries through the Tracy Pumping Plant. Presently, the Tracy Fish Facility Improvement Program is constrained by these daily water deliveries which prevent significant modification of the facilities. Because of this, Reclamation proposes to develop the new TFF to be located adjacent to the existing Tracy Fish Collection Facility. Several conceptual alternatives are being investigated. The new TFF will be designed initially for testing and demonstrating new technology. Successful components will ultimately be used to replace the present Tracy Fish Collection Facility, and this action will require additional environmental documentation.

The new TFF will also provide timely information on critical issues related to new fish protection facilities for the State of California's diversion at Clifton Court Forebay (CCF), and/or for a diversion in the North Delta being considered as a part of the CALFED Bay-Delta Program. The CALFED Bay-Delta Program (a cooperative effort among State and Federal agencies and California's environmental, urban, and agricultural communities) is supportive of efforts to develop new fish screen and salvage technology that can be applied at Tracy and other locations. Currently, Reclamation is working with the CALFED Bay-Delta Program agencies to develop a Project Management Agreement for the preferred design approach, facility specifications, and process for incorporating input from participating agencies. The new TFF is presently supported by a professional team of fishery scientists, engineers, and management staff now working with the Tracy Fish Facility Improvement Program.

Electronic Mail Addresses and Internet Site

You may submit comments and data by sending electronic mail (e-mail) or faxograms to the following addresses:

- Mr. Richard Raines, Bureau of Reclamation, Denver, Colorado; electronic mail address: rraines@do.usbr.gov; facsimilie number: (303) 445–6328.
- Ms. Lynnette Wirth, Bureau of Reclamation, Mid-Pacific Region; electronic mail address: lwirth@mp.usbr.gov; facsimilie number: (916) 978–5114.

Additional information regarding the new TFF can be obtained from the Mid-Pacific Regional Office Internet web site (http://www.mp.usbr.gov/tffdir.html).

Special Services

A headphone device for the hearing impaired will be available at the meetings. Persons requiring other special services should contact Ms. Lynnette Wirth at (916) 978–5102. Please notify Ms. Wirth as far in advance of the particular meeting as possible, but no later than 3 working days prior to the meeting to enable Reclamation to secure the services. If a request cannot be honored, the requester will be notified.

Dated: February 12, 1999.

Kirk C. Rodgers,

Deputy Regional Director.

[FR Doc. 99–4087 Filed 2–18–99; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

[USITC SE–99–07]

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 2, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–044 (Review) (Sorbitol from France)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on March 11, 1999).
5. Inv. No. 731–TA–750 (Remand) (Vector SuperComputers from Japan)—briefing and vote.
6. Outstanding action jackets:

(1) Document No. GC–99–003: Initial determination terminating the investigation on the basis of withdrawal of the complaint in Inv. No. 337–TA–411 (Certain Organic Photoconductor Drums and Products Containing Same).

(2) Document No. GC–99–007: Approval of Notice of Privacy Act systems of records; and report to the Office of Management and Budget and Congress.

(3) Document No. INV–99–006: Approval of response to Baker & Botts' request for clarification of antitrust question in questionnaires in Inv. Nos. 751–TA–21–27 (Final) (Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: February 16, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–4279 Filed 2–17–99; 1:45 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Justice Management Division; Information Resources Management/ Telecommunications Services Staff Meeting of the Global Criminal Justice Information Network Interim Executive Steering Committee

AGENCY: Justice Management Division, Information Resources Management, Telecommunications Services Staff, Justice.

ACTION: Notice of meeting of the Global Criminal Justice Information Network Interim Executive Steering Committee.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Global Criminal Justice Information Network Interim Executive Steering Committee will be held on March 3, 1999. The Group will meet from 8:30am–1:00pm at the Global Program Management Office at 901 E Street, NW Suite 510, Washington DC 20530. The Interim Executive Steering Committee will meet to plan the agenda for the upcoming full Global Advisory Committee meeting, tentatively scheduled for March 25–26, 1999.

This meeting will be open to the public. Any interested person must register two (2) weeks in advance of the meeting. Registrations will then be accepted on a space available basis. For information on how to register, contact Kathy Albert, the Designated Federal Employee (DFE), 901 E Street NW, Suite 510, Washington, DC 20530, or call (202) 514–3337. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the DFE.

If you need special accommodations due to a disability, please contact Vanida Thompson at (202) 514–0147 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Kathy Albert, the DFE, 901 E Street NW, Suite 510, Washington, DC 20530, or call (202) 514–3337.

Dated: January 27, 1999.

Kathy Albert,

Global Network Coordinator, Telecommunications Services Staff, Information Resources Management, Justice Management Division, Department of Justice.

[FR Doc. 99–4148 Filed 2–18–99; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to The Comprehensive Environmental Responses, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on February 5, 1999 a proposed Consent Decree in *United States* v. *Paul D. Emery, Trustee of the Paul D. Emery Revocable Living Trust, and 6 Acres of Land, More or Less, Located in Summit County, Ohio,* Civil Action No. 5:99CV0274, was lodged with the United States District Court for the Northern District of Ohio, Eastern Division. This consent decree represents a settlement of claims of the United States against Paul D. Emery, Trustee of the Paul D. Emery Revocable Living Trust and 6 Acres of Land, located in Summit County, Ohio, for reimbursement of response costs and injunctive relief in connection with the Copley Square Plaza Site (''Site'') pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*

Under the Consent Decree, the Defendants will sell the Site a commercial piece of property, and give the United States 85% of the net proceeds from the sale, as reimbursement for the United States' past response costs at the Site, which total approximately $796,713 plus prejudgment interest. The United States' recovery will be capped at $720,000.

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, DC 20530, and should refer to *United States* v. *Paul D. Emery, Trustee of the Paul D. Emery Revocable Living Trust, et. al.* and D.J. Ref. 90–11–3–1717.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Ohio, Eastern Division, 1800 Bank One Center, 600 Superior Avenue, East Cleveland, Ohio 44114–2600, 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, NW, 3rd Floor, Washington, DC 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 enclose a check in the amount of $13.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 99–4145 Filed 2–18–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Lodging of Settlement Agreement Under The Comprehensive Environmental Response, Compensation and Liability Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Settlement Agreement in *In re: United States Brass Corporation,* Case No. 94–40823S (Bankr. E.D. Tex.), was lodged on January 8, 1999, with the United States Bankruptcy Court for the Eastern District of Texas. The United States filed a proof of claim in this Chapter 11 bankruptcy relating to hazardous substances disposed by the debtor at the Operating Industries, Inc. landfill Superfund site in Monterey Park, California.

Pursuant to the Settlement Agreement, U.S. Brass will pay $625,000 to the United States to resolve the United States' claim, and to resolve U.S. Brass's liability, with specified reservations of rights, for the Operating Industries site.

The Department of Justice will receive comments relating to the proposed Settlement Agreement for a period of thirty days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *In re: United States Brass Corporation,* D.J. Ref. 90–11–2–156G.

The proposed Settlement Agreement may be examined at the office of the United States Attorney, 110 N. College, Suite 700, Tyler, Texas 75702, and at

the Region IX office of the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105. A copy of this proposed Settlement Agreement may also be examined at the Consent Decree Library, 1120 G Street, NW 3rd Floor, Washington, DC 20005 (202) 624–0892. A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $2.50 for a copy of the Settlement Agreement (25 cents per page reproduction costs) payable to ''Consent Decree Library.''

Joel M. Gross, Chief,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–4147 Filed 2–18–99; 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 of 1980, as Amended

Consistent with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 13, 1999, a proposed consent decree in *United States* v. *Vermont American Corporation,* Civil Action No. 2:99–CV–9, was lodged with the United States District Court for the District of Vermont. This proposed consent decree resolves 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 Vermont American Corporation relating to certain response costs that have been or will be incurred at or from a Site known as the Parker Landfill Superfund Site (''Site'') located in the Town of Lyndon, Vermont.

The consent decree requires the defendant to pay $350,000 to the United States, $150,000 to the parties constructing the cap at the Site, waive its claims against municipalities that disposed of municipal solid waste at the Site and withdraw its adverse comments to an earlier consent decree.

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, DC 20530, and should refer to *United States* v. *Vermont American Corporation,* D.J. Ref. 90–11–2–1120.

The proposed consent decree may be examined at the Office of the United States Attorney, 11 Elmwood Ave., Burlington, VT 05401, at the Region I office of the Environmental Protection Agency, JFK Federal Building, Boston, MA 02203–2211, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 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 enclose a check (there is a 25 cent per page reproduction cost) in the amount of $7.00 payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–4146 Filed 2–18–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of Information Collection Under Review; Application for Voluntary Departure Under the Family Unity Program.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until April 20, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement without change of previously approved collection.

(2) Title of the Form/Collection: Application for Voluntary Departure Under the Family Unity Program.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–817. Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. The Family Unity Program provides for the voluntary departure of the spouse and unmarried children who are not eligible for the same status as the legalized alien they are related to.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 23,944 responses at 2 hours and 35 minutes (2.583) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 61,847 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: February 9, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–4057 Filed 2–18–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of Information Collection Under Review; Application for Replacement Naturalization/Citizenship Document.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until April 20, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: *Reinstatement without change of previously approved collection.*

(2) Title of the Form/Collection: Application for Replacement Naturalization/Citizenship Document.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form N–565. Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. This form is used by the INS to determine the applicant's eligibility for a replacement of a Declaration of Intention, Naturalization Certificate, Certificate of Citizenship or Repatriation Certificate that was lost, mutilated or destroyed, or if the applicant's name was changed by marriage or by court order after issuance of original document. This form may also be used to apply for special certificate of naturalization as a U.S. citizen to be recognized by a foreign country.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 22,567 responses at 55 minutes (0.916) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 20,671 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: February 12, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–4059 Filed 2–18–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of Information Collection under Review: Application to Register Permanent Residence or Adjust Status, and Supplement A to Form I–485.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the Federal Register on July 27, 1998 at 63 FR 45263, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted March 22, 1999. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposal collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement without change of previously approved collection.

(2) Title of the Form/Collection: Application to Register Permanent Residence or Adjust Status, and Supplement A to form I–485.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Forms I–485 and I–485 Supplement A. Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. This collection allows an applicant to determine whether he or she must file under section 245 of the Immigration and Nationality Act, and it allows the Service to collect information needed for reports to be made to different government committees.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: I–485 Adult respondents is 245,975 at 5.25 hours per response; I–485 Children respondents is 193,941 at 4.5 hours per response; and I–485 Supplement A respondents is 33,112 at 13 minutes (.216) hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: Form I–485 annual burden hours are 2,164,104 and Form I–485 Supplement A annual burden hours are 7,152.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in the notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 101 G Street, NW., Washington, DC 20530.

Dated: February 12, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–4058 Filed 2–18–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Waiver of Rights, Privileges, Exemptions and Immunities.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 11, 1998 at 63 FR 42876, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 22, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of currently approved collection.

(2) Title of the Form/Collection: Immigrant Petition by Alien Entrepreneur.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–508. Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. This form is used by the Service to determine eligibility of an applicant to retain the status of alien lawfully admitted to the United States for permanent residence.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 1,800 responses at 5 (.083) minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 150 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: February 12, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–4060 Filed 2–18–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1970–98]

Extension of Work Authorization for Certain Haitians Previously Granted Deferred Enforced Departure (DED); Correction

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice, Correction.

SUMMARY: This notice is a technical correction to the Immigration and Naturalization Service (Service) **Federal Register** notice entitled ''Extension of Work Authorization for certain Haitians granted Deferred Enforced Departure (DED)'' published at 63 FR 68799 on December 14, 1998. The December 14, 1998, notice extended the validity of Employment Authorization Documents (EADs) granted to Haitian nationals on the basis of Deferred Enforced Departure (DED). This notice clarifies which EADs are automatically extended. The automatic extension applies to EADs bearing either the notation ''A–11'' on the face of the card under ''Category'' if it was issued on a Form I–766, or the notation ''274A.12(A)(11)'' on the face of the card under ''Provision of Law'' if it was issued on a Form I–688B. By this notice, the Service is granting an automatic extension until December 22, 1999, of the validity of those EADs issued on Form I–688B or Form I–766 to Haitians on the basis of DED. This action will allow Haitian beneficiaries of DED to maintain their employment eligibility until they are able to apply for new EADs in connection with their applications for adjustment of status, under section 902 of the Haitian Refugee Immigration Fairness Act of 1998.

DATES: This notice is effective February 19, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Immigration and Naturalization Service, Adjudications Division, 425 I Street, NW, Room 3214, Washington, DC 20536, telephone (202) 514–3228, or Anne Gyemant, Immigration and Naturalization Service, Adjudications Division, 425 I Street, NW, Room 3214, Washington, DC 20536, telephone (202) 353–8921.

SUPPLEMENTARY INFORMATION:

What is the purpose of the technical correction?

The language in the **Federal Register** notice entitled ''Extension of Work Authorization for certain Haitians granted Deferred Enforced Departure (DED)'' published at 63 FR 68799 on December 14, 1998, provides that, in order to benefit from the automatic extension, the EAD card must contain the notation ''274A.12(A)(11)'' on the face of the card under ''Provision of Law'' and an expiration date of December 22, 1998. This presumes that the affected Haitians were all issued EAD cards on Form I–688B. However, the Service also issued EAD cards on the Form I–766. The Form I–766 does not contain any references to ''Provision of Law.'' The corresponding field to ''Provision of Law'' on a Form I–766 is the ''Category'' field, under which ''A–11'' should appear. Additionally, some EADs may contain an expiration date other than December 22, 1998. Therefore, in order to benefit from the extension, an EAD card must contain either the notation ''274A.12(A)(11)'' on the face of the card under ''Provision of Law'' if it was issued on Form I–688B, or the notation ''A–11'' on the face of the card under ''Category'' if it was issued on Form I–766. The card does not have to have an expiration date of December 22, 1998.

Can an applicant who is eligible for DED under the December 23, 1997, Presidential order still apply if he or she has not already done so?

No. Applications for DED-related employment authorization received after December 22, 1998, will be rejected. Applications that were received by either the Texas Service Center or the Service Center having jurisdiction over the applicant's place of residence on or before December 22, 1998, will be accepted.

How can employers determine which employees have an additional year of employment authorization?

For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I–9 until December 22, 1999, employers of DED Haitians whose employment authorization is automatically extended must accept an EAD card which contains either the notation ''274A.12(A)(11)'' on the face of the card under ''Provision of Law'' if it was issued on a Form I–688B, or the notation ''A–11'' on the face of the card under ''Category'' if it was issued on a Form I–766.

EAD cards or extension stickers showing the automatic December 22, 1999, expiration date will not be issued. Qualified Haitian nationals will be sent a letter to their last known address. Employers should not request proof of Haitian citizenship or any other additional document if the documentation presented by the employee satisfies the I–9 requirements and appears to be genuine and to relate to the employees. This action by the Service through this notice in the **Federal Register** does not affect the right of an employee to present any legally acceptable document as proof of identity and eligibility for employment. Employers are reminded that the laws prohibiting unfair immigration-related employment practices remain in full force. Employers may call the Service's Office of Business Liaison employer hotline at 1–800–357–2099 to speak to a Service representative about this Notice. Employers can also call the Office of special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155. Employees or applicants can call the OSC Employee Hotline at 1–800–255–7688.

How should employers fill out the Form I–9?

To complete the Form I–9 at the time of hire re re-verification for an employee who presents an EAD card that has been automatically extended by this **Federal Register** notice, the employer should include or add the following information under Section 2 (List A) or Section 3 of the Form I–9, as appropriate:

(1) Record the document identification information of the EAD; and

(2) Record December 22, 1999, for the document expiration date.

If the employee presents the INS letter that was mailed to the alien employee's last known address informing him or her of the extension or a copy of this **Federal Register** notice, the employer should note on Form I–9 his or her review of these documents.

Dated: February 1, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–4164 Filed 2–18–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP)–1209]

RIN 1121–ZB43

Office for State and Local Domestic Preparedness Support; Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Office of Justice Programs' Center for Domestic Preparedness at Fort McClellan, Alabama

AGENCY: Office for State and Local Domestic Preparedness Support, Office of Justice Programs, Justice.

ACTION: Notice of Intent (NOI).

SUMMARY: In response to the increased threat from international and domestic terrorism, the U.S. Department of Justice (DOJ), Office of Justice Programs (OJP), was tasked with the establishment of the Center for Domestic Preparedness (CDP) at Fort McClellan, Alabama, to provide training to state and local emergency first responders on handling of incidents involving weapons of mass destruction. Through DOJ's Fiscal Year 1998 Appropriations Act (Pub. L. No. 105–119) and the accompanying Conference Report, Congress expressed its concern regarding the reality and potential catastrophic effects of incidents involving weapons of mass destruction, including chemical and biological terrorism. Congress declared that while the Federal government plays an important role in preventing and responding to these types of threats, it is state and local public safety personnel who will be first responders on the scene when such incidents occur. A critical element in the national domestic preparedness initiative is the training and support available to states and local communities.

Congress appropriated funds so the OJP could establish the CDP at Fort McClellan to develop national operational standards in domestic preparedness and to train emergency first responders on handling of incidents involving weapons of mass destruction. Two crucial factors contributed to Congress' direction that the CDP locate at Fort McClellan. The first was that the U.S. Army's Chemical Defense Training Facility (CDTF) at Fort McClellan was the only such facility in the United States that provided live chemical agent decontamination training, and thus the only existing location that could provide the highest level of this type of training to potential responders. The second factor was congressional recognition that a very real threat currently exists, and that time was not available to design and build new facilities for this training initiative.

The purpose of the CDP is to establish and maintain national operational standards in domestic preparedness and to provide high-level training through the utilization of facilities that would not otherwise be available to most local emergency first responders.

Courses focus on emergency operations center training, including simulations and computer models/scenarios to teach operational standards and test state and local procedures. Other advanced awareness training courses will be designed for different levels of personnel within the emergency first responder community, from basic emergency medical technician, fireman, or policeman to high-level supervisors. Central to the establishment of the CDP and the location of this training at Fort McClellan is the ability of trainers and students from Federal, State, and local agencies to interact in a real environment involving the use of Personal Protective Equipment (PPE) and the unique opportunity to train with live chemical agents. The live agent environment reinforces confidence in the PPE and provides the most realistic scenarios available for those who will be first on the scene of an incident involving weapons of mass destruction.

Fort McClellan is scheduled to close on October 1, 1999, pursuant to the 1995 recommendation of the Base Realignment and Closure (BRAC) Commission. The establishment of the CDP at Fort McClellan and the development of this training was proposed to occur in stages. The first stage of CDP training, which is an interim program and which is ongoing, involves the use of existing U.S. Army facilities and training programs at Fort McClellan by the CDP, but under the auspices of the Army. This interim action was the subject of a separate National Environmental Policy Act (NEPA) Environmental Assessment (EA).

The proposed final stage involves the transfer of ownership from the Army to OJP of several existing training and support facilities at Fort McClellan and the assumption of responsibility for the training program to be provided to state and local emergency first responders. The proposed training program will use existing housing, buildings, and facilities, and train approximately 10,000 students per year or about 200 students a week. With the departure of the Army upon closure of Fort McClellan, some existing operational procedures will be changed. By law, the U.S. Army is the only agency authorized to manufacture and transport the chemical agents used in the first responder training. If OJP assumes full responsibility for the first responder training after the closure of Fort McClellan, the Army can no longer produce chemical agents at Fort McClellan but will transport approximately two liters of chemical agents annually to the CDP from the Army's production facility at Aberdeen Proving Ground, Maryland. Use of the Anniston and/or Talladega Airport is under consideration for purpose. This NOI pertains to the planned preparation of a DEIS to assess the proposed CDP operations and training at Fort McClellan subsequent to base closure.

FOR FURTHER INFORMATION CONTACT: Mr. L Z Johnson, Director, Center for Domestic Preparedness, Post Office Box 5100, Fort McClellan, AL 36205–5100, telephone (256) 848–4139; or E-mail: HYPERLINK mail to: Johnsonz@OJP.USDOJ.GOV

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The DEIS is to assess the environmental impacts associated with the proposed OJP assumption of responsibility for and the conduct of emergency first responder training in support of State and local needs. The training is proposed to be conducted at Fort McClellan, using existing U.S. Army facilities that would be transferred to OJP upon closure of the base pursuant to the Base Realignment and Closure (BRAC) Commission recommendation of 1995.

2. Alternatives

The only reasonable alternative to be considered in this DEIS is the No Action Alternative. Congress mandated and funded the use of Fort McClellan by OJP, in large measure because of the availability of an existing live chemical agent training capability there. If it should be determined that OJP will not assume responsibility for continued emergency first responder training at Fort McClellan after base closure, a new review of needs and alternatives involving coordination at the national level would then be required.

3. Scoping Process and Public Participation

Letters and informational fliers describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens and citizen groups who

have previously expressed or are known to have an interest in activities associated with the closure of Fort McClellan. Additionally, two public scoping meetings will be held. One meeting will be held in Talladega, AL and the other scoping meeting will be held in Anniston, Alabama. The public, as well as Federal, State, and local agencies are encouraged to participate in these scoping meetings and/or submit data, information, and comments by mail identifying relevant environmental and socioeconomic issues to be addressed in this environmental analysis. Comments and information should be mailed to Mr. L Z Johnson at the above address. Requests to be placed on the mailing list for announcements and the Draft EIS should also be sent to Mr. L Z Johnson. The first public scoping meeting will be held at the Colony House Motel, Banquet Room, 65600 Highway 77 North, Talladega, AL at 7:30 PM, CST, on Tuesday, March 16, 1999. The second public scoping meeting will be held at the City Meeting Center, Meeting Room B, 1615 Noble Street, Anniston, AL at 7:30 PM, CST, on Wednesday, March 17, 1999.

4. Related Documents

Environmental Assessment For the Center for Domestic Preparedness, Fort McClellan, Alabama, U.S. Department of Justice, Office of Justice Programs, July 1998 and Final Environmental Impact Statement for Disposal and Reuse of Fort McClellan, Alabama, U.S. Department of the Army, August 1998.

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 99–4096 Filed 2–18–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Review

February 16, 1999.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ({202} 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Office of the Secretary, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), on or before March 22, 1999. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Office of the Secretary.

Title: Applicant Background Questionnaire.

OMB Number: 1225–0072 (Revision).

Frequency: On occasion.

Affected Public: Applicants for positions recruited in the Department of Labor.

Number of Respondents: 3,000.

Estimated Time Per Respondent: 5 minutes.

Total Burden Hours: 250.

Total Annualized Capital/startup Costs: $0.

Total Annual (operating/maintaining): $0.

Description: The Applicant Background Questionnaire gathers information concerning the gender, race or ethnic background, and disability status of applicants for employment. Applicants for employment are asked to voluntarily complete this form to assist the agency in evaluating and improving its efforts to publicize job openings and to encourage applications for employment, from a diverse group of qualified candidates, including minorities and persons with disabilities. The Department will use the information to assess the effectiveness of specific outreach efforts and means of communicating information on job vacancies. The form is revised to delete the applicant's Social Security Number for the requested responses, and to add a question concerning whether an applicant's disability is among a list of targeted disabilities.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 99–4154 Filed 2–18–99; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available form 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–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis—Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

None

Volume II:

None

Volume III:

None

Volume IV:

None

Volume V:

Nebraska:
NE990003 (FEB. 19, 1999)
NE990011 (FEB. 19, 1999)
NE990025 (FEB. 19, 1999)
NE990038 (FEB. 19, 1999)
NE990044 (FEB. 19, 1999)

Volume VI:

None

Volume VII:

California:
CA990029 (FEB. 19, 1999)
CA990030 (FEB. 19, 1999)

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 11 day of February 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–3956 Filed 2–18–99; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Notice of Availability of 1999 Competitive Grant Funds for Service Area CO–2, NCO–1 AND MCO in Colorado

AGENCY: Legal Services Corporation.

ACTION: Solicitation of Proposals for the Provision of Civil Legal Services for the Basic Field-General service area (CO–2), which comprises: Alamosa, Archuleta, Baca, Bent, Cheyenne, Conejos, Costilla, Crowley, Delta, Dolores, Elbert, Garfield, Hinsdale, Huerfano, Kiowa, Kit Carson, La Plata, Larimer, Las Animas, Lincoln, Logan, Mesa, Mineral, Montezuma, Montrose, Morgan, Otero, Ouray, Phillips, Prowers, Rio Grande, Saguache, San Juan, San Miguel, Sedgwick, Washington, Weld, and Yuma counties in Colorado; the Basic Field-Migrant service area (MCO), which encompasses migrant farmworkers living in the state of Colorado; and the Basic Field Native American service area (NCO–1), which encompasses Native Americans living in all counties in Colorado, including those who live on the Ute and southern Ute Indian reservations.

SUMMARY: The Legal Services Corporation (LSC or Corporation) is the national organization charged with administering federal funds provided for civil legal services to the poor. Congress has adopted legislation requiring LSC to utilize a system of competitive bidding for the award of grants and contracts.

The Corporation hereby announces that it is reopening competition for 1999 competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to the eligible client population in service areas CO–2, NCO–1 and MCO in Colorado. Two grant terms will be funded. The tentative date of the first grant term is as early as July 1, 1999 through December 31, 1999 (six months). The tentative grant amounts for the first grant term are $446,752 for Basic Field-General (CO–2), $62,802 for Basic Field-Migrant (MCO), and $12,047 for Basic Field-Native American (NCO–1). The second grant term is for calendar year 2000 (twelve months). The exact amount of congressionally appropriated funds and the date and terms of their availability for calendar year 2000 are not known, although it is anticipated that the funding amount will be similar to calendar year 1999 funding, which was $893,500 for Basic Field-General (CO–2), $125,610 for Basic Field-Migrant (MCO), and $24,095 for Basic Field-Native American (NCO–1).

DATES: Request for Proposals (RFP) will be available after February 19, 1999. A Notice of Intent to Compete is due by May 10, 1999. Grant proposals must be received at LSC offices by 5 p.m. EDT, June 1, 1999.

ADDRESSES: Legal Services Corporation—Competitive Grants, 750 First Street NE., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Lou Castro, Administrative Assistant, Office of Program Performance, (202) 336–8932.

SUPPLEMENTARY INFORMATION: LSC is seeking proposals from non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients, and from private attorneys, groups of private attorneys or law firms, state or local governments, and substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The solicitation package, containing the grant application, guidelines, proposal content requirements and specific selection criteria, is available by contacting the Corporation by e-mail at castrol@smtp.lsc.gov, by phone at 202–336–8932; or by FAX at 202 336–7272. LSC will not FAX the solicitation package to interested parties.

Karen J. Sarjeant,

Vice President for Programs.

[FR Doc. 99–4003 Filed 2–18–99; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 136th Meeting

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on March 5, 1999 from 9:00 a.m. to 3:00 p.m. in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506.

The meeting will be open to the public on a space available basis. Following opening remarks and announcements, there will be a Congressional update and remarks by guest speaker Bill Irwin, new vaudevillian. Additional topics for discussion will include: Application Review (Education & Access, Heritage & Preservation, Planning & Stabilization, Partnership Agreements, Leadership Initiatives, Policy Research & Analysis), a videotape of excerpts from the National Heritage Fellowships concert, FY 2000 Guidelines (Partnership Agreements; Heritage Fellowships; Jazz Masters Fellowships; Folk & Traditional Arts Infrastructure Initiative), a budget update, and general discussion.

If, in the course of discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506, 202/682–5532, TTY-TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, D.C. 20506, at 202/682–5570.

Dated: February 16, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 99–4167 Filed 2–18–99; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* New.

2. *The title of the information collection:* 10 CFR Part 63—Disposal of High-Level Radioactive Wastes at Yucca Mountain, Nevada.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* The information need only be submitted one time.

5. *Who will be required or asked to report:* The State of Nevada or Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of the potential high-level waste geologic repository site, or wishing to participate in a license application review for the potential geologic repository.

6. *An estimate of the number of responses:* 2.

7. *The estimated number of annual respondents:* 2.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* An average of 40 hours per response for consultation requests, 80 hours per response for license application review participation proposals, and one hour per response for statements of representative authority. The total burden for all responses is estimated to be 242 hours annually.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Applicable.

10. *Abstract:* 10 CFR Part 63 requires the State of Nevada and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning the review of the potential repository site, or wish to participate in a license application review for the potential repository. Representatives of the State of Nevada or Indian Tribes must submit a statement of their authority to act in such a representative capacity. The information submitted by the State and Indian Tribes is used by the Director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. The proposed rule indicated in ''The title of the information collection'' will be published in the **Federal Register** within several days of the publication date of this **Federal Register** notice. Instructions for accessing the electronic OMB clearance package for the rulemaking have been appended to the electronic rulemaking. Members of the public may access the electronic OMB

clearance package by following the directions for electronic access provided in the preamble to the titled rulemaking. Comments and questions should be directed to the OMB reviewer by March 22, 1999: Erik Godwin, Office of Information and Regulatory Affairs (3150–), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 4th day of February 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–4107 Filed 2–18–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Revision of Date for Public Workshop To Develop a Standard Review Plan for Decommissioning

SUMMARY: This notice provides the revised date for one of the Public Workshops the Nuclear Regulatory Commission (NRC) is sponsoring to solicit input from stakeholders during the development of a Standard Review Plan (SRP) and other guidance for decommissioning nuclear facilities.

SUPPLEMENTARY INFORMATION: On October 21, 1998, NRC announced that it was sponsoring a series of public workshops to support the staff's development of an SRP and other guidance for the decommissioning of nuclear facilities. On November 18, 1998, NRC published the schedule for these workshops and indicated that a workshop would be held on June 16–17, 1999, at NRC Headquarters at Two White Flint North, 11545 Rockville Pike, Rockville, MD. Because of scheduling conflicts, NRC staff is rescheduling the June 16–17 workshop. The new date for the workshop is June 23–24, 1999. The workshop will be held at NRC Headquarters at Two White Flint North, 11545 Rockville Pike, Rockville, MD. Future workshop dates remain as summarized in the November **Federal Register** notice, namely on August 18–19, 1999, and October 20–21, 1999. These workshops will be held at NRC Headquarters at Two White Flint North, 11545 Rockville Pike, Rockville, MD.

FOR FURTHER INFORMATION CONTACT: Dominick A. Orlando, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, at (301) 415–6749.

Dated at Rockville, Maryland, this 12th day of February 1999.

For the U.S. Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–4105 Filed 2–18–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1671]

Standard Review Plan for the Recertification of the Gaseous Diffusion Plants; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued a draft report NUREG–1671 entitled ''Standard Review Plan for the Recertification of the Gaseous Diffusion Plants'' (GDPs) for review and comment.

DATES: Submit comments by May 20, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland 20852, between 7:45 am and 4:15 pm during Federal workdays.

Draft NUREG–1671 is available for inspection and copying for a fee at the NRC Public Document Room (PDR), 2120 L Street, NW., Washington, DC 20555–0001, and at the Local Public Document Rooms (LPDRs), under Docket No. 70–7001, at the Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003; and under Docket No. 70–7002, at the Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

A free single copy of draft NUREG–1671, to the extent of supply, may be requested by writing to U.S. Nuclear Regulatory Commission, Distribution Services, Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Charles Cox, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6755.

SUPPLEMENTARY INFORMATION: On March 3, 1997, NRC assumed regulatory jurisdiction over the GDPs from the U.S. Department of Energy. The GDPs are regulated under 10 CFR Part 76 of the Commission's regulations. NRC staff has developed NUREG–1671, ''Standard Review Plan for the Recertification of the Gaseous Diffusion Plants,'' to provide guidance for the review and approval of the applications for recertification of the GDPs under Section 10 CFR 76.31 for review and comment.

Dated at Rockville, Maryland, this 12th day of February 1999.

For the Nuclear Regulatory Commission.

Elizabeth Q. Ten Eyck,

Director, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 99–4106 Filed 2–18–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 34–1 and RI 34–3

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. RI 34–1, Financial Resources Questionnaire, collects detailed financial information for use by OPM in determining whether to agree to a waiver, compromise, or adjustment of the collection of erroneous payments from the Civil Service Retirement and Disability Fund. RI 34–3, Notice of Amount Due Because of Annuity Overpayment, informs the annuitant that payment is due, describes the cause for the overpayment, and collects information from the annuitant about repayment amounts.

Approximately 520 RI 34–1 and 1,561 RI 34–3 forms will be completed per year. Each form requires approximately 1 hour to complete. The annual burden is 520 hours and 1,561 hours respectively.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of

Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before April 20, 1999.

ADDRESSES: Send or deliver comments to— Dennis A. Matteotti, Acting Chief Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–4110 Filed 2–18–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Emergency Clearance of a Revised Information Collection: SF 2817

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for emergency clearance of a revised information collection: SF 2817, Life Insurance Election. SF 2817, Life Insurance Election, is used by employees to enroll in or change their enrollment in the Federal Employee's Group Life Insurance Program. The Federal Employees Life Insurance Improvement Act (Pub. L. 105–311), enacted on October 30, 1998, necessitated changes to the SF 2817. That Act allowed employees to elect from one to five multiples of Option C—Family life insurance. In the past, employees either had Option C or they did not—there were no multiples to elect.

We estimate 100 forms are completed annually by assignees. Each form takes approximately 15 minutes to complete. The annual estimated burden is 25 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before February 24, 1999. OMB will have 5 calendar days to act after the close of this **Federal Register** Notice.

ADDRESSES: Send or deliver comments to—

Laura Lawrence, Senior Insurance Benefits Specialist, Insurance Operations Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3415, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Phyllis R. Pinkney, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–4111 Filed 2–18–99; 8:45 am]

BILLING CODE 6325–01–P

POSTAL RATE COMMISSION

Postal Facility Visit

AGENCY: Postal Rate Commission.

ACTION: Notice of Commission visit.

SUMMARY: Postal Rate Commission members and staff will visit the Postal Service's Brentwood facility (in northeast Washington, DC) to observe experimental methods of accounting for certain business reply mail (BRM). The visit will further the Commission's understanding of these alternatives to the Service's manual accounting system.

DATES: The visit will take place in late February. See Supplementary Information for details.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street NW., Washington, DC 20268–0001, 202–789–6820.

SUPPLEMENTARY INFORMATION: Since mid-1997, a limited number of mailers have been participating in a formal experiment testing two alternatives to the Postal Service's longstanding manual method of weighing, rating and billing nonletter-sized BRM pieces. These methods are referred to as ''reverse manifest'' and ''weight averaging.'' A special set of experimental fees applies to the use of the alternative methods.

The experiment was authorized for two years, as requested by the Service in Docket No. MC97–1. This authority expires June 7, 1999. The Service may seek permanent changes in classifications and fees related to use of the alternative methods either prior to, or after, the scheduled expiration.

The date of the visit has not been determined, but is expected to be scheduled for a weekday in late February. Persons interested in learning the exact date should contact Mr. Sharfman.

Dated: February 12, 1999.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–4029 Filed 2–18–99; 8:45 am]

BILLING CODE 7710–01–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, NW., Washington, DC 20549.

Extension: Rule 10f–3 [17 CFR 270.10f–3], SEC File No. 270–237, OMB Control No. 3235–0226.

Notice is hereby given that, pursuant to the Paperwork Reduction act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 10(f) of the Investment Company Act of 1940 [15 U.S.C. 80a–10(f)] (the ''Act'' or ''Investment Company Act'') prohibits a registered investment company (''fund'') from purchasing any security during an underwriting or selling syndicate if the fund has certain relationships with a

principal underwriter[1] for the security (''affiliated underwriter'').[2] Congress enacted this provision in 1940 to protect funds and their investors by preventing underwriters from ''dumping'' unmarketable securities on affiliated funds.[3]

Under rulemaking authority under section 10(f), the Commission adopted rule 10f–3 in 1958 and last amended the rule in 1997. Rule 10f–3 currently permits a fund to purchase securities in a transaction that otherwise would violate section 10(f) if, among other things:

(1) The securities either are registered under the Securities Act of 1933, are municipal securities with certain credit ratings, or are offered in certain private or foreign offerings;

(2) The offering involves a ''firm commitment'' underwriting.

(3) The fund (together with other funds advised by the same investment adviser) purchases no more than 25 percent of the offering;

(4) The fund purchases the securities from a member of the syndicate other than the affiliated underwriter;

(5) If the securities are municipal securities, the purchase is not a group sale; and

(6) The fund's directors have approved procedures for purchases made in reliance on the rule and regularly review fund purchases to determine whether they comply with these procedures.

These limitations are designed to ensure that the purchases are not likely to raise the concerns that section 10(f) was enacted to address and are consistent with the protection of investors.[4]

Among other conditions to the exemptions, rule 10f–3 requires a fund's board of directors to approve procedures that would ensure compliance with the conditions of the rule and to approve changes to these procedures as necessary. The board also must review rule 10f–3 transactions on a quarterly basis. The rule requires funds to report, on Form N–SAR, any transactions effected under the rule and to attach to the report a written record of each transaction. The written record must state (i) from whom the securities were acquired, (ii) the identity of the underwriting syndicate's members, (iii) the terms of the transactions, and (iv) the information or materials on which the fund's board of directors has determined that the purchases were made in compliance with procedures established by the board. In addition, a fund must retain written records of the rule 10f–3 transactions and of the quarterly transactional information reviewed by the board for six years. These requirements are important not only because they provide a built-in mechanism for fund boards to monitor compliance with the rule, but also because they permit the Commission to review these materials during fund inspections, monitor developments under the rule, and consider whether to take enforcement action in appropriate cases.

The Collection of information requirements (as well as other requirements) of rule 10f–3 are designed to assure that appropriate arrangements are in place to conform the enforceability of the Act against the fund. The records required to be maintained are reviewed by the Commission in the course of its compliance and examination program, and are used by fund directors to evaluate procedures and transactions executed pursuant to the rule. The rule does not impose any separate recordkeeping costs on funds because the records required to be maintained already are required by section 31(a) of the Act and rules 31a–1 and 31a–2.

From our review of Form N–SAR filings, we estimate that 300 funds rely on rule 10f–3 annually. We estimate that the board of directors of each of those funds makes, on average, 1 response each year when it approves procedures required by the rule. We estimate further that the approval of such procedures would take, on average, 1 hour of director time (at $500 per hour) and 0.5 hours of professional time (at $150 per hour) for 70 funds that do not purchase foreign or municipal securities, and 1.5 hours of director time and 0.5 hours of professional time for 230 funds that invest in these securities. Thus, Commission staff estimates that the total annual reporting burden of the rule's paperwork requirement is 565 hours, at a total annual cost of $230,000.[5]

The estimated burden hours are a decrease from the current allocation of 670 hours. The decrease of 105 hours reflects a decrease in the number of funds that have reported the purchase of securities in reliance on rule 10f–3. The 1996 proposal to eliminate the requirements that funds report information about rule 10f–3 transactions on Form N–SAR would not have led to a decrease in the burden hours reportable for rule 10f–3 because the hours associated with the reporting requirement are included in the burden hours reported for Form N–SAR.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of Commission rules.

Commission staff estimates that there is not cost burden for rule 103–3 other than the $230,000 in annual costs associated with the respondent reporting burden. the procedures to be developed and revised as necessary required on start-up or capital costs. Additionally, the development of and occasional review of procedures would be part of customary and usual business practice to ensure compliance with applicable laws and regulations.

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections

[1] ''Principal underwriter'' is defined to mean (in relevant part) an underwriter that, in connection with a primary distribution of securities, (A) is in privity of contract with the issuer or an affiliated person of the issuer, (B) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate, or (C) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution. 15 U.S.C. 80a–2(a)(29).

[2] Section 10(f) prohibits the purchase if a principal underwriter of the security is an officer, director, member of an advisory board, investment adviser, or employee of the fund, or if any officer, director, member of an advisory board, investment adviser, or employee of the fund is affiliated with the principal underwriter. 15 U.S.C. 80a–10(f).

[3] See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 35 (1940) (statement of Commissioner Healy).

[4] See Exemption for the Acquisition of Securities During the Existence of An Underwriting or Selling Syndicate, Investment Company Act Release No. 22775 (July 31, 1997) [62 FR 42401 (Aug. 7, 1997)] (''1997 Adopting Release'').

[5] This estimate is equal to the number of funds that do not purchase municipal securities (70) multiplied by the estimated annual cost of adopting or reviewing procedures for each fund ((1 × $500) + (0.5 × $150 = $575) plus the number of funds that invest in foreign or municipal securities (230) multiplied by the estimated annual cost of adopting or reviewing procedures for each fund ((1.5 × $500) + (.05 × $150) = $825), for a total of $230,000 ((70 × 575) + (230 × $825) = $230,000).

of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associated Executive Director, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0–4, 450 5th Street, NW, Washington, DC 20549.

Dated: February 10, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–4115 Filed 2–18–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, DC 20549.

Extension: Rule 24 [17 CFR 250.24], SEC File No. 270–129, OMB Control No. 3235–0126

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit to the Office of management and Budget (''OMB'') a request for an extension of the previously OMB approved rule 24 under the Public Utility Holding Company Act of 1935 (15 U.S.C. Section 79a et seq.) (''Act'').

Rule 24 under the Act requires the filing with the Commission of certain information indicating that an authorized transaction has been carried out in accordance with the terms and conditions of the Commission order authorizing the transaction. The Commission needs the information under rule 24 to ensure that the terms and conditions of its orders are being complied with, and the Commission uses the information to ensure appropriate compliance with the Act. The respondents are comprised of two groups of entities: (a) registered holding companies under the Act and their direct and indirect subsidiaries and affiliates; and (b) holding companies exempt from the provisions of the Act by rule or order from all provisions of the Act, except section 9(a)(2). It is estimated that the total number of respondents is 134, and the average number of responses per respondent is 2.4 responses annually. The Commission estimates that the total annual reporting burden under rule 24 is 636 hours (*e.g.*, 318 filings × 2 hours = 636 burden hours).

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. There is no requirement to keep the information in the forms confidential because it is public information.

Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Securities and Exchange Commission, 450 5th Street, NW Washington, DC 20549.

Dated: February 10, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–4119 Filed 2–18–99; 8:45 am]

BILLING CODE 3010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23693; File No. 812–11230]

Conseco Series Trust, et. al: Notice of Application

Februry 12, 1999.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (''1940 Act'') granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of any current or future series of Conseco Series Trust and shares of any future fund that is designed to fund variable insurance products and for which Conseco Capital Management, Inc. (''Conseco''), or any of its affiliates, serves, now or in the future, as investment adviser, administrator, manager, principal underwriter or sponsor (''Fund'') to be offered and sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts (''Variable Contracts'') issued by both affiliated and unaffiliated life insurance companies; and (2) qualified pension and retirement plans outside of the separate account context (''Qualified Plans'' or ''Plans'').

APPLICANTS: Conseco Series Trust and Conseco Capital Management, Inc.

FILING DATES: The application was filed on July 28, 1998, and an amended and restated application was filed on December 11, 1998.

HEARING OR NOTIFICATION OF HEARING: An order (''Order'') granting the application will be issued unless the Commission 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 March 9, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, c/o William P. Latimer, Esq., Senior Counsel, Conseco Capital Management, Inc., 11825 North Pennsylvania Street, Carmel, Indiana 46032.

FOR FURTHER INFORMATION CONTACT: Laura A Novack, Senior Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The completer application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Conseco Series Trust was organized as a business trust under the laws of the Commonwealth of Massachusetts by

Declaration of Trust dated November 15, 1982, and commenced operations as a registered open-end management investment company on October 19, 1983. Conseco Series Trust currently consists of five separately managed series, each with its own investment objective and policies. Additional series could be added in the future.

2. Conseco is registered as an investment adviser under the Investment Advisers Act of 1940, and serves as Conseco Series Trust's investment adviser. Conseco is a wholly-owned asset management subsidiary of Conseco, Inc., a publicly-owned financial services company, whose principal operations are in development, marketing, and administration of specialized annuity, life and health insurance products.

3. Conseco Series Trust currently offers its shares to insurance companies as the investment vehicle for their separate accounts that fund variable annuity contracts. Applicants propose that shares of each series be offered to affiliated and unaffiliated insurance companies for their separate accounts as the investment vehicle to fund either variable annuity or variable life insurance contracts. Separate accounts owning shares of the Fund and their insurance company depositors are referred to herein as ''Participating Separate Accounts'' and ''Participating Insurance Companies,'' respectively.

4. The Participating Insurance Companies will establish their own Participating Separate Accounts and design their own Variable Contracts. Each Variable Contract will have certain unique features and will probably differ from other Variable Contracts supported by the Fund with respect to insurance guarantees, premium structure, charges, options' distribution method, marketing techniques, sales literature and other aspects. Each Participating Insurance Company will enter into a participation agreement with the Fund on behalf of its Participating Separate Account, and will have the legal obligation of satisfying all applicable requirements under state and federal law. The role of the Fund, so far as the federal securities laws are applicable, will be limited to that of offering its shares to separate accounts of various insurance companies and fulfilling any conditions the Commission may impose upon granting the Order requested herein.

5. Applicants state that shares of each series of the Fund also may be offered directly to Qualified Plans outside of the separate account context. The Plans will be pension or retirement plans intended to qualify under Sections 401(a) and 501(c) of the Internal Revenue Code of 1986, as amended (''Code''). Many of the Plans will include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under Section 401(k) of the Code. The Plans also will be subject to, and will be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974 (''ERISA'') applicable to either defined benefit or to defined contribution profit-sharing plans, specifically ''Title I—Protection of Employee Benefit Rights.'' Applicants assert that the Plans therefore will be subject to regulatory provisions under the Code and ERISA regarding, for example, reporting and disclosure, participation and vesting, funding, fiduciary responsibility and enforcement.

6. Qualified Plans may choose the Fund (or any series thereof) as their sole investment or as one of several investments. Plan participants may or may not be given an investment choice depending on the Plan itself. Shares of the Fund sold to such Qualified Plans would be held by the trustee(s) of the Plans as mandated by Section 403(a) of ERISA. Conseco will not act as investment adviser to any of the Qualified Plans that will purchase shares of the Fund. There will be no pass-through voting to the participants in such Qualified Plans.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 6(c) of the 1940 Act exempting scheduled and flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, sub-adviser, principal underwriter and depositor of such an account) from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and subparagraph (b)(15) of Rules 6e–2 and 6e–3(T) thereunder, to the extent necessary to permit shares of the Fund to be offered and sold to variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies and to Qualified Plans.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or any affiliated life insurance company. Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment company that also offers its shares to a variable annuity or flexible premium variable life insurance account of the same company or of an affiliated or unaffiliated insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as ''mixed funding.''

3. The relief granted by Rule 6e–2(b)(15) also is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying investment company that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common investment company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' Moreover, the relief under Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying investment company that also offers its shares to Plans. The use of a common investment company as the underlying investment medium for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies and qualified Plans is referred to as ''extended mixed and shared funding.''

4. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Section 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an

affiliated life insurance company. Thus, Rule 6e–3(T) permits mixed funding, but precludes shared funding or selling shares to Plans.

5. Applicants state that the current tax law permits the Fund to increase its asset base through the sale of shares to Plans. Section 817(h) of the Code imposes certain diversification standards on the underlying assets of the separate accounts funding the Variable Contracts. The Code provides that the Variable Contracts will not be treated as annuity contracts or life insurance contracts for any period in which the underlying assets are not adequately diversified in accordance with regulations issued by the Treasury Department. The regulations generally provide that to meet the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do, however, contain certain exceptions to this requirement, one of which permits shares of an investment company to be held by trustees of a Qualified Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their Variable Contracts. Treas. Reg. § 1.817–5(f)(3)(iii). As a result, applicants assert that Qualified Plans may select the Fund as an investment option without endangering the tax status of Variable Contracts issued through Participating Insurance Companies.

6. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of these Treasury regulations. Applicants assert that the sale of shares of the same underlying investment company to both separate accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company.

8. Applicants state that the partial relief from Section 9(a) found in sub-paragraph (b)(15) of Rules 6e–2 and 6e–3(T), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of that section. Applicants state that the exemptions recognize that it is not necessary to apply the provisions of Section 9(a) to the many individuals who may be involved in a large insurance company, but who have no connection with the investment company, or any series thereof, funding the separate accounts. Applicants note that the Participating Insurance Companies will not be involved in the management or administration of the Fund. Therefore, applicants assert that applying the restrictions of Section 9(a) serves no regulatory purpose. Applicants state that applying such restrictions would increase the monitoring costs incurred by the Participating Insurance Companies and therefore, would reduce the net rates of return realized by Variable Contract owners. Moreover, applicants state that the appropriateness of the relief requested will not be affected by the proposed sale of shares of the Fund to Qualified Plans, because the insulation of the Fund from those individuals who are disqualified under the 1940 Act remains in place. Applicants submit that applying the requirements of Section 9(a) because of investment by Qualified Plans would be unjustified and would not serve any regulatory purpose. Moreover, since the Plans are not investment companies and will not be deemed affiliated solely by virtue of their shareholdings, no additional relief is necessary.

9. Subparagraph (b)(15)(iii) of rules 6e–2 and 6e–3(T) under the 1940 Act assumes that contract owners are entitled to pass-through voting privileges with respect to investment company shares held by a related separate account. Applicants state that pass-through voting privileges will be provided for Variable Contract owners as long as the Commission interprets the 1940 Act to require such privileges to be provided.

10. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provides exemptions from the pass-through voting requirements in limited situations. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provides that an insurance company may disregard the voting instructions of its contract owners with respect to the investment of an underlying investment company or any contract between an investment company and its investment adviser, when an insurance regulatory authority so requires. In addition, an insurance company may disregard the voting instructions of its contract owners if the contract owners initiate certain changes in the investment company's investment policies, principal underwriter, or investment adviser. Voting instructions with respect to a change in investment policies may be disregarded only if the insurance company makes a good faith determination that such change would: (a) violate state law; (b) result in investments that were not consistent with the investment objectives of the separate account; or (c) result in investments that would vary from the general quality and nature of investments and investment techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives. Voting instructions with respect to a change in the principal underwriter may be disapproved if such disapproval is reasonable. Voting instructions with respect to a change in an investment adviser may be disregarded only if the insurance company makes a good faith determination that: (a) the adviser's fee would exceed the maximum rate that may be charged against the separate account's assets; (b) the proposed adviser may be expected to employ investment techniques that vary from the general techniques used by the current adviser; or (c) the proposed adviser may be expected to manage the investment company's investments in a manner that would be inconsistent with its investment objectives or in a manner that would result in investments that vary from certain standards.

11. Applicants state that Rule 6e–2 recognizes that variable life insurance contracts have important elements unique to insurance contracts and are subject to extensive state regulation of insurance. Applicants maintain, therefore, that in adopting Rule 6e–2, the Commission recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers or principal underwriters. Applicants also state that the Commission expressly recognized that state insurance regulators have authority to require an insurance company to draw from its general account to cover costs imposed upon the insurance company by a change approved by contract owners over the insurance company's objections.

Therefore, the Commission deemed exemptions from pass-through voting requirements necessary ''to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' Flexible premium variable life insurance contracts and variable annuity contracts are subject to substantially the same state insurance regulatory authority, and therefore, the corresponding provisions of Rule 6e–3(T) (which apply to flexible premium insurance contracts and which permit mixed funding) presumably were adopted in recognition of the same considerations the Commission applied in adopting Rule 6e–2. Applicants submit that these considerations are no less important or necessary when an insurance company funds its separate accounts in connection with mixed and shared funding, and that such funding does not compromise the goals of the insurance regulatory authorities or of the Commission.

12. Applicants further state that the Fund's sale of shares to Qualified Plans will not have any impact on the relief requested in this regard. As previously noted, shares of the Fund will be held by the trustees of the Plans as required by Section 403(a) of ERISA. Section 403(a) provides that the trustees must have exclusive authority and discretion to manage and control a Plan with two exceptions: (a) When the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. Accordingly, applicants submit that unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans since such Plans are not entitled to pass-through voting privileges.

13. Applicants submit that even if a Qualified Plan were to hold a controlling interest in the fund, such control would not disadvantage other investors in the Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, applicants submit that investment in the Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed and shared funding. Unlike mixed or shared funding, Plan investor voting rights cannot be trusted by veto rights of insurers or state regulators.

14. Applicants generally expect many Qualified Plans to have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plan in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser(s) or another named fiduciary to exercise voting rights in accordance with instructions from participants. Applicants submit that where a Qualified Plan does not provide participants with the right to give voting instructions, there is no potential for material irreconcilable conflicts of interest between or among contract owners and Plan investors with respect to voting of the Fund's shares. Applicants further submit that where a Plan does provide participants with the right to give voting instructions, they see no reason to believe that participants in Qualified Plans generally, or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage contract owners. The purchase of shares of the Fund by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed and shared funding.

15. Applicants state that no increased conflicts of interest would be presented by the granting of the request relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. Applicants note that where different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of other insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. Applicants submit that this possibility is no different or greater than exists where a single insurer and its affiliates offer their insurance products in several states.

16. Applicants further submit that affiliation does not reduce the potential for differences in state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its Participating Separate Account's investment in the Fund.

17. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard contract owner voting instructions. Potential disagreement is limited by the requirement that disregarding voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard Contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the Fund, to withdraw its separate account's investment in the Fund. No charge or penalty will be imposed as a result of such a withdrawal.

18. Applicants submit that there is no reason why the investment policies of the Fund with mixed funding would, or should, be materially different from what those policies would, or should, be if the Fund supported only variable annuity or only variable life insurance contracts. Hence, applicants state, there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, applicants represent that the Fund will not be managed to favor or disfavor any particular insurer or type of contract.

19. As noted above, Section 817(h) of the Code imposes certain diversification standards on the assets underlying the Variable Contracts held in the portfolios of management investment companies. Treasury Regulation § 1.817–5(f)(3)(iii), which establishes diversification requirements for such portfolios, specifically permits, among other

things, ''qualified pension or retirement plans'' and separate accounts to share the same underlying management investment company. Therefore, applicants assert that neither the Code, the Treasury regulations, nor the revenue rulings thereunder, recognize or proscribe any inherent conflict of interest if Qualified Plans, variable annuity separate accounts, and variable life separate accounts all invest in the same management investment company.

20. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Participating Separate Account or a Qualified Plan cannot net purchase payments to make the distributions, the Participating Separate Account or Plan will redeem shares of the Fund at their net asset value in conformity with Rule 22c–1 under the 1940 Act to provide proceeds to meet distribution needs. The Qualified Plan will then make distributions in accordance with the terms of the Plan. The life insurance company will surrender values from the Separate Account into the general account to make distributions in accordance with the terms of the Variable Contract.

21. Applicants state that the sale of shares to Plans should not increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Applicants submit that there should be very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contract owners.

22. Applicants also state that it is possible to provide an equitable means of giving voting rights to Participating Separate Account contract owners and to Qualified Plans. The transfer agent for the Fund will inform each Participating Insurance Company of each Participating Separate Account's share ownership in the Fund, as well as inform the trustees of Qualified Plans of their holdings. The Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Fund would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

23. Applicants submit that the ability of the Fund to sell its shares directly to Qualified Plans does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a Qualified Plan participant. Regardless of the rights and benefits of Qualified Plan participants or contract owners, the Qualified Plans and the Participating Separate Accounts only have rights with respect to their respective shares of the Fund. No shareholder of any of the Fund has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

24. Applicants state that there are no conflicts between the contract owners of Participating Separate Accounts and Qualified Plan participants with respect to the state insurance commissioners' veto powers over investment objectives. The basic premise of shareholder voting is that shareholders may not all agree with a particular proposal. While interests and opinions of shareholders may differ, however, this does not mean that there are any inherent conflicts of interest between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, complex and time-consuming transactions must be undertaken to accomplish such redemptions and transfers. Conversely, trustees of Qualified Plans can make the decision quickly and redeem their shares of the Fund and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts, or, as is the case with most Plans, even hold cash pending a suitable investment. Based on the foregoing, applicants represent that even should the interests of contract owners and the interests of qualified Plans conflict, the conflicts can be resolved almost immediately because the trustees of the Qualified Plans can, independently, redeem shares out of the Fund.

25. Applicants also assert that there does not appear to be any greater potential for material irreconcilable conflicts arising between the interests of Qualified Plan participants and contract owners of Participating Insurance Companies from possible future changes in the federal tax laws than that which already exists between variable annuity and variable life insurance contract owners.

26. Applicants believe that the discussion contained herein demonstrates that the sale of shares of the Fund to Qualified Plans and Variable Contracts does not increase the risk of material irreconcilable conflicts of interest. Furthermore, applicants state that the use of the Fund with respect to variable life insurance contracts and Qualified Plans is not substantially different from the Fund's current use, in that variable insurance contracts and Qualified Plans, like variable annuity contracts, are generally long-term retirement vehicles. In addition, applicants assert that regardless of the type of shareholder in the Fund, Conseco is or would be contractually or otherwise obligated to manage each series of the Fund solely and exclusively in accordance with that series' investment objectives, policies and restrictions as well as any guidelines established by the Fund's Board for Trustees.

27. Applicants assert that various factors have prevented more insurance companies from offering variable annuity and variable life insurance contracts than currently do so. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management, and the lack of public name recognition as investment professionals. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Variable Contract business on their own. Applicants assert that use of the Fund as a common investment medium for Variable Contracts would ameliorate these concerns. Participating Insurance Companies would benefit not only from the investment advisory and administrative expertise of Conseco and its affiliates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants submit that therefore, making the Fund available for mixed and shared funding will encourage more insurance companies to offer Variable Contracts. Applicants claim that this should result in increased competition with respect to both Variable Contract design and pricing, which can be expected to result in more product variation and lower charges. Moreover, the sale of the shares of the Fund to Qualified Plans should further increase the amount of assets available for investment by the Fund. This in turn, should inure to the benefit of contract owners by promoting economies of scale, by permitting greater safety through greater diversification, and by making the addition of new portfolios to the Fund more feasible.

28. Applicants assert that there is no significant legal impediment to permitting mixed and shared funding and sales of Fund shares to Qualified Plans.

Applicants' Conditions

Appliants have consented to the following conditions:

1. A majority of the Board of Trustees of the Fund (''Board'') will consist of persons who are not ''interested persons'' of the Fund, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any Trustee or Trustees, then the operation of this condition shall be suspended: (a) for a period of 45 days, if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all Participating Separate Accounts and of the participants in Qualified Plans investing in the Fund and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Fund are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Plan to disregard the voting instructions of its participants.

3. Participating Insurance Companies, Conseco, or any other investment adviser of the Fund, and any Qualified Plans that execute a fund participation agreement upon becoming an owner of 10% or more of the Fund's assets (''Participants'') will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation of each Participating Insurance Company to inform the Board whenever it has determined to disregard contract owner voting instructions and, when pass-through voting is applicable, an obligation of each Plan to inform the Board whenever it has determined to disregard voting instructions from Plan participants. The responsibilities to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Insurance Companies and Plans under their agreements governing participation in the Fund, and such agreements shall provide, in the case of Participating Insurance Companies, that these responsibilities will be carried out with a view only to the interests of contract owners, and in the case of Qualified Plans, that these responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of the Board, or by a majority of its disinterested Trustees, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans will, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested Trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the Participating Separate Accounts from the Fund or any series thereof, and reinvesting such assets in a different investment medium, which may include another series of the Fund, or submitting the question of whether such reinvestment should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owners' voting instruction, and that decision represents a minority position or would preclude a majority vote, then that insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the Fund's election, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of material irreconcilable conflict and bearing the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Qualified Plans under their agreements governing participation in the Fund and these responsibilities will be carried out with a view only to the interests of contract owners and Plan participants, respectively.

5. For purposes of Condition 4, a majority of the disinterested Trustees will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or Conseco be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Variable Contract if an offer to do so has been declined by vote of a majority of contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by Condition 4 to establish a new funding medium for the Plan if: (a) an offer to do so has been declined by vote of a majority of Plan participants materially and adversely affected by the material irreconcilable conflict; or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without a vote of its participants.

6. Any Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly and in writing to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to contract owners who invest in Participating Separate Accounts so long as the Commission interprets the 1940 Act to require pass-through voting

for contract owners. Accordingly, the Participating Insurance Companies will vote shares of the Fund held in their Participating Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each of their Participating Separate Accounts calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Participating Separate Accounts will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares attributable to it, in the same proportion as it votes shares for which it has received instructions.

8. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

9. All reports of potential or existing conflicts received by a Board, and all Board action with regard to: (a) Determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

10. The Fund will notify all Participants that disclosure in separate account prospectuses or any Qualified Plan prospectuses or other Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. The Fund will disclose in its prospectus that: (a) The Fund is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and for Plans; (b) due to differences of tax treatment and other considerations, the interests of various contract owners participaing in the Fund and the interest of Qualified Plans investing in the Fund may conflict; and (c) the Board will nomitor for the existence of any material conflicts and determine what action, if any, should be taken.

11. The Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in shares of the Fund), and, in particular, the Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

12. If and to the extent that Rules 6e-2 and 6e-3(T) are amended (or if rule 6e-3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act, or the rules thereunder, with respect to mixed or shared funding on terms and conditions materially different from any exemptions grated in the order requested by Applicants, then the fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), as amended, or Rule 6e-3, as adopted, to the extent applicable.

13. No less than annually, the Participants shall submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data to the Board when it so reasonably requests shall be a contractual obligation of all Participants under the agreements governing their participation in the Fund.

14. In the event that a Qualified Plan should ever become an owner of 10% or more of the assets of the Fund, such Qualified Plan will execute a participation agreement with the Fund which includes the conditions set forth herein, to the extent applicable. A qualified plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commisison, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–4120 Filed 2–18–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41049; File No. SR–CSE–98–03]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Regarding Regulatory Cooperation

February 11, 1999.

I. Introduction

On October 26, 1998, the Cincinnati Stock Exchange, Inc. (''CSC'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] In its proposal, the CSE seeks to amend its disciplinary rules to provide for regulatory cooperation by Exchange members in connection with actions initiated by other self-regulatory organizations (''SROs''). Notice of the proposal was published in the **Federal Register** on December 18, 1998.[3] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The Exchange proposes to amend Rule 8.2 by adding subsections (f) and (g). Subsection (f) would require members, member organizations, persons associated with a member or member organization, and other persons or entities over whom the Exchange has jurisdiction to testify before another SRO and to furnish information in connection with a regulatory inquiry, investigation, examination, or disciplinary proceeding resulting from an agreement entered into by the Exchange pursuant to subsection (g). Further, subsection (f) would require these persons and entities not to impede such a proceeding. In addition, the new subsection (g) provides that the Exchange may enter into agreements with domestic and foreign SROs providing for the exchange of information and other forms of mutual

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40782 (Dec. 11, 1998), 63 FR 70172.

assistance for market surveillance, investigative, enforcement, and other regulatory purposes.

Under the proposed rule change, the Exchange also makes explicit that persons or entities, required to furnish information or testimony pursuant to a regulatory agreement, will be afforded the same rights and procedural protections that such persons or entities would have if the Exchange had initiated the request for information or testimony.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act,[4] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

This proposal, which is similar to other exchanges' proposals that were approved by the Commission,[5] grew out of a meeting of the Intermarket Surveillance Group (''ISG'') to coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets.[6] The Commission believes that the proposed rule change achieves a reasonable balance between the need for regulatory cooperation and protection of the procedural rights of Exchange members and others from whom information or testimony is requested. The rule would provide the Exchange with the authority to seek cooperation by certain persons with respect to inquiries and investigations resulting from regulatory agreements between the Exchange and another SRO while explicitly providing any person or entity required to furnish information or testimony pursuant to the rule with the same procedural rights that they would have if the request was pursuant to an Exchange-initiated inquiry or investigation.

The Commission believes that the proposed rule change will further the interest of the public and provide for the protection of investors by allowing the Exchange to assist other SROs conduct prompt inquiries into possible trading violations and other possible misconduct. As the marketplaces become more global and interlinked, the Commission believes that it is important that the SROs coordinate their investigatory activities to prevent fraudulent and manipulative acts and practices in all marketplaces.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CSE–98–03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–4118 Filed 2–18–99; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b)(5).

[5] *See, e.g.,* Securities and Exchange Act Release Nos. 39557 (Jan. 16, 1998), 63 FR 3940 (Jan. 27, 1998) (notice of filing and immediate effectiveness of SR–CHX–97–33); and 35646 (April 25, 1995), 60 FR 21227 (May 1, 1995) (order approving SR–PSE–95–02).

[6] The ISG is an organization of securities industry SROs formed in 1983 to coordinate and develop intermarket surveillance programs designed to identify and combat fraudulent and manipulative acts and practices. To promote its purposes, members agree to exchange such information as is necessary for ISG members to perform their self-regulatory and market surveillance functions.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41044; File No. SR–NYSE–99–6]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Extending the Pilot Rules Governing the Reimbursement of Member Organizations for Costs Incurred in the Transmission of Proxy and Other Shareholder Communication Material

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 February 10, 1999, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 February 12, 1999. The Exchange proposes to extend the pilot period through March 15, 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 1, 1998, and lowered the rate of reimbursement for mailing each set of initial proxies and annual reports

[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).

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. The ''October Filing'' [6] likewise maintained the five cent fee reduction and extended the pilot period through February 12, 1999. This proposed rule change would extend the pilot period through March 15, 1999, and also keep intact the five cent fee reduction.

In March 1998, the Commission published for public comment an Exchange filing (''March Filing'') that proposed a revision to the Rules regarding ''householding'' and proposed extending the pilot period through June 30, 2001.[7] The extension of the pilot period would give the Commission additional time to consider the March Filing, without a lapse in the current rules. Thus, absent an extension of the pilot period, the fees in effect prior to the Initial Filing would return to effectiveness, creating confusion among NYSE member organizations and issuers. Furthermore, the extension will provide the Commission with additional time to review the 1998 Audit Report of the pilot fee structure prepared by the Exchange's independent auditor.[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-sRegulatory 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 (or such shorter time period as designated by the Commission); the proposed rule change has become effective pursuant to Section 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: (1) 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 1998 Audit Report concerning the pilot fee structure; 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 February 12, 1999, through March 15, 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. In addition, the Exchange recently provided the Commission with the 1998 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 analyze the 1998 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 February 12, 1999, will revert to those in effect prior to the pilot period. The Commission believes such a result could 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, February 10, 1999. 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 purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

[5] *See* Securities Exchange Act Release No. 40289 (July 31, 1998), 63 FR 42652 (Aug. 10, 1998).

[6] *See* Securities Exchange Act Release No. 40621 (Oct. 30, 1998), 63 FR 60036 (Nov. 6, 1998).

[7] See Securities Exchange Act Release No. 39774 (Mar. 19, 1998), 63 FR 14745 (Mar. 26, 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. The Exchange submitted the 1998 Audit Report to the Commission on December 24, 1998.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[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 47 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.

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–6 and should be submitted by March 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–4116 Filed 2–18–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41041; File No. SR–NYSE–98–45]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Rule 80A

February 11, 1999.

I. Introduction

On December 8, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Rule 80A relating to limitations on program trading.

The proposed rule change was published for comment in the **Federal Register** on December 23, 1998.[3] Three comment letters were received on the proposal.[4] This order approves the NYSE proposal.

II. Description of the Proposal

The NYSE proposes to eliminate the ''sidecar'' provisions contained in Rule 80A. As discussed below, current Rule 80A(a) provides that, under the sidecar, program trading orders in stocks in the Standard & Poor's (''S&P'') 500 Stock Price Index are temporarily diverted into separate electronic files for a five-minute period if the primary S&P 500 futures contract declines by 12 points form its previous close. If the sidecar is triggered, current Rule 80A(b) also imposes limitations on the entry of certain types of stop orders or stop limit orders. Both of these provisions would be eliminated under the Exchange's proposal.

The NYSE also proposes to revise the trigger levels for the ''collar'' provisions of Rule 80A. Currently, NYSE Rule 80A(c) provides for limitations on index arbitrage trading in any component of the S&P 500 Stock Price Index whenever the Dow Jones Industrial Average[5] (''DJIA'') moves up or down 50 points form its previous close. If the market advances by 50 points or more, all index arbitrage orders to buy must be stabilizing (buy minus); similarly, if the market declines, all index arbitrage orders to sell must be stabilizing (sell plus). The stabilizing requirements are removed if the DJIA moves back to or within 25 points of the previous day's close. The NYSE proposes to replace the current 50-point and 25-point triggers with thresholds set at a ''two-percent value'' and a ''one-percent value'' of the DJIA. These percent values would be translated into specific point levels at the beginning of each calendar quarter based on an average for the DJIA over the preceding month.

The NYSE is also proposing to delete the provisions, contained in current Rule 80A(d), relating to purchases and sales of a ''basket'' (as that term is defined in Rule 800(b)(iii)), because the basket product is no longer traded on the Exchange.

Finally, the Exchange is proposing to clarify its definition of index arbitrage in Supplementary Material .40 to Rule 80A to include some forms of ''basis trading.''[6]

III. Summary of Comments

As previously stated, the Commission received three comment letters on the Exchange's proposal. Two of the commenters, the CME and the Broker-Dealers, were generally supportive of the proposal, while one commenter, Neuberger, opposed parts of the proposal.

The CME ''applaud[ed] the efforts of the NYSE to liberalize the provisions of Rule [80A]'' because it ''has long regarded Rule 80A as an artificial constraint to the interplay of U.S. equity markets.''[7] The CME cited studies that it asserted would refute the efficacy of the rule.[8] While the CME stated that ''further expansion of the trigger or the elimination of the collar altogether is a worthy objective[,]'' it also ''understand[s] that progress is often realized in graduated steps rather than in leaps.''[9]

The Broker-Dealers also generally supported the NYSE's proposals to eliminate the sidecar procedures and to widen the thresholds for the restrictions on index arbitrage imposed by Rule 80A's collar provisions. Nevertheless, the Broker-Dealers stated that they agree with members of The President's Working Group on Financial Markets (''Working Group''),[10] that the index arbitrage collar provisions do not appear to be appropriate and may hamper legitimate intermarket trading activities and result in market inefficiencies. Like the CME, the Broker-Dealers believe that the Commission should approve the Exchange's current revisions to Rule

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40797 (December 23, 1998), 63 FR 71176.

[4] The comment letters have been placed in Public File SR–NYSE–98–45, which is available for inspection in the Commission's Public Reference Room. *See* Letters from T. Eric Kilcolin, President and Chief Executive Officer, Chicago Mercantile Exchange (''CME''), dated January 11, 1999 (''CME Letter''); Pikku Thakkar, Senior Counsel, Neuberger Berman, LLC (''Neuberger'') dated January 15, 1999 (''Neuberger Letter''); and Paul A. Merolla, Vice President, Associate General Counsel, Goldman, Sachs & Co., Christine A. Sakach, Director and Senior Counsel, Merrill Lynch & Co., Robin Roger, Principal and Counsel, Morgan Stanley & Co. Incorporated, and Andrew Constan, Managing Director, Salomon Smith Barney Inc. (collectively, ''Broker-Dealers''), dated January 20, 1999 (''Broker-Dealer Letter'').

[5] ''Dow Jones Industrial Average'' is a service mark of Dow Jones & Company, Inc.

[6] A description of the types of basis trading included in Supplementary Material .40 is provided in infra note 24.

[7] CME Letter at 1, supra note 4.

[8] *See* Harris, L., Sofianos, G., and Shapiro J. 1994, ''Program Trading and Intraday Volatility'' *The Review of Financial Studies* Vol. 7, No. 4, Winter 1994; and Overdahl, J., and McMillan, H. 1998, ''Another Day, Another Collar: An Evaluation of the Effects of NYSE Rule 80A on Trading Costs and Intermarket Arbitrage,'' *Journal of Business* Vol. 71, No. 1, 1998.

[9] CME Letter at 2, supra note 4.

[10] The Working Group consists of the Under Secretary of Finance of the Department of the Treasury and the Chairmen of the Commission, the Commodity Futures Trading Commission, and the Board of Governors of the Federal Reserve System. The Working Group's concerns over NYSE Rule 80A are discussed below.

80A only as an interim step and that the Commission should urge the NYSE to move expeditiously toward ultimate rescission of Rule 80A.[11] In addition, the Broker-Dealers were critical of the Exchange's proposed revision to its definition of index arbitrage for purposes of Rule 80A. In particular, the Broker-Dealers were concerned that the reference to ''basis trading'' in the revised definition of index arbitrage could be interpreted to apply to activities that are not typically associated with index arbitrage and not reasonably implied by the language of Rule 80A.[12]

Neuberger, on the other hand, believes that, if adopted, the proposed expansion of the collar thresholds ''is certain to substantially increase the daily volume of index arbitrage activity and will simultaneously translate into a substantially higher level of daily volatility upon the NYSE.'' [13] In addition, Neuberger ''feel[s] that this proposal is not in the best interests of the investing public, particularly the small investor.'' [14]

IV. Discussion

After careful review of the Exchange's proposed amendment to Rule 80A and the comments, the Commission is approving the changes as proposed. The Commission believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b).[15] Specifically, the Commission believes that the proposals are consistent with Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[16]

Elimination of Sidecar Provisions

As discussed above, the sidecar provisions of current NYSE Rule 80A(a) temporarily divert program trading orders and impose limitations on the entry of stop orders if the primary S&P 500 futures contract declines by 12 points from its previous close if this price decline occurs prior to 3:25 p.m. (Eastern). Specifically, when the 12-point trigger is reached in the S&P 500 futures, for the next five minutes, market orders involving program trading in each of the stocks underlying the S&P 500 futures entered into the Exchange's automated order-routing facilities are routed to a separate file for each such stock. Buy and sell orders are then paired in the file to determine the extent of the order imbalance, if any. After five minutes, the program trading order imbalances, if any, are reported to the stocks' specialists. The program orders then become eligible for execution. Trading in a stock will halt, however, if there appears that there is not sufficient trading interest on the Exchange to allow for an orderly execution of a transaction in the stock.

The sidecar provisions of current NYSE Rule 80A(b) also prohibit members or member organizations from entering certain types of stop orders or stop limit orders for the remainder of the trading day if the 12-point trigger in the S&P 500 futures is reached prior to 3:25 p.m. A member or member organization may, however, enter a stop order or stop limit order of 2,099 shares or less for the account of an individual investor pursuant to instructions received directly from that investor.

The Exchange proposes to eliminate these sidecar provisions in their entirety. The Exchange represents that experience has shown that program trading orders have not been entered in significant numbers while a sidecar is in effect and that these restrictions, therefore, do not appear to be necessary. The Exchange believes that the collars contained in NYSE Rule 80A, along with the Exchange's trading halt policy and circuit breakers contained in NYSE Rule 80B, obviate the need for a sidecar. The NYSE's proposal to eliminate the sidecar provisions was supported by the CME [17] and the Broker-Dealers,[18] and no objection to this aspect of the rule proposal was addressed by Neuberger.[19] In addition, the Commission staff's trading analysis of October 27, 1997 indicated that the triggering of the sidecar provisions had no discernible effect on that day's market decline.[20] Accordingly, the Commission believes that the Exchange's determinations regarding the elimination of the sidecar provisions are reasonable and appropriate in the public interest.

B. Widening of the Collar Trigger Levels

The Exchange also proposes to widen the trigger levels for the collar restrictions on index arbitrage program trading imposed by NYSE Rule 80A(c). Currently, the collar restrictions apply to index arbitrage trading in any component of the S&P 500 Stock Price Index whenever the DJIA is up or down 50 points from its previous close. If the market advances by 50 points or more, all index arbitrage orders to buy must be stabilizing (buy minus); similarly, if the market declines, all index arbitrage orders to sell must be stabilizing (sell plus). The stabilizing requirements are removed if the DJIA moves back to or within 25 points of the previous day's close.

In its proposal, the NYSE acknowledges that the stock market has risen dramatically since the 50-point and 25-point triggers for Rule 80A(c) were adopted in 1990. The Exchange, therefore, proposes to replace the current 50-point and 25-point triggers with thresholds set at a ''two-percent value'' and a ''one-percent value'' of the DJIA. These percent values would be translated into specific point levels at the beginning of each calendar quarter based on a average for the DJIA over the preceding month. Resetting the NYSE Rule 80A triggers on a quarterly basis to retain alignments with the 2% and 1% thresholds of the DJIA would be consistent with the procedures currently used by the securities markets to reset the point triggers for the 10%, 20%, and 30% cross-market circuit breaker trading halts.

The Commission believes that the Exchange's proposal to widen the current thresholds for NYSE Rule 80A is reasonable and appropriate in the public interest. The shift to 2% and 1% thresholds for the collars represents a significant improvement over the current 50-point and 25-point triggers. The new percentage thresholds for Rule 80A should result in a substantial reduction in the frequency of the application of the rule's restrictions on index arbitrage trading, which have been implemented on virtually a daily basis over the past few months. For example, the 50-point collar provisions were triggered a total of 366 times in 1998; if the proposed 2% threshold had been in place, the collar provisions would have been triggered only 42 times during the year.

The Commission is sensitive to the issue raised in the Neuberger comment letter that some small investors may be concerned that the NYSE's proposal to

[11] Broker-Dealer Letter at 1–3, supra note 4.

[12] *Id.* at 1–4.

[13] Neuberger Letter at 1, supra note 4.

[14] *Id.*

[15] 15 U.S.C. 78f(b).

[16] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] CME Letter at 1, supra note 4.

[18] Broker-Dealer Letter at 1, supra note 4.

[19] Neuberger Letter, supra note 4.

[20] *See* Division of Market Regulation, *Trading Analysis of October 27 and 28, 1997* (September 1998), at 35 n. 102.

widen the collars to 2% and 1% could result in increased program trading that may contribute to higher levels of market volatility.[21] Nevertheless, the Commission questions whether Rule 80As current restrictions on certain types of intermarket program trading strategies are an appropriate means to address overall volatility. Indeed, the Commission notes that last year the Working Group suggested that Rule 80A had become outdated and recommended that the NYSE at least significantly increase Rule 80A's trigger levels.[22]

Although the Commission is approving the Exchange's current proposal, it continues to question whether the restrictions on index arbitrage that are retained in the revised Rule 80A are appropriate. The markets have changed significantly over the past decade. For example, the NYSE has substantially increased its system capacity so that it can handle five times the trading volumes experienced in October 1987. Moreover, the variety of derivative products has grown, as has the array of derivative-related equity trading strategies. It may make little sense to single out index arbitrage, which ensures that markets are aligned economically, from all other types of program trading. Indeed, the restrictions on index arbitrage may tend to disconnect the securities and futures markets and impose unnecessary costs on market participants.[23]

Accordingly, although the Commission believes that the Exchange's proposal meets the statutory standards for approval and that it represents an improvement over the previous set of trading restrictions contained in Rule 80A, the Commission recommends that the Exchange periodically evaluate the continuing need for Rule 80A's restrictions on index arbitrage.

C. The Rule's Definition of Index Arbitrage

In its proposal, the Exchange defines index arbitrage in Supplementary Material .40 to Rule 80A to include some forms of ''basis trading.'' [24] As discussed above, the Broker-Dealers were critical of the proposed revision to the definition of index arbitrage. In particular, the Broker-Dealers indicated that the inclusion of basis trading in the revised definition of index arbitrage would be inappropriate and could apply to activities that are not typically associated with index arbitrage and not reasonably implied by the language of Rule 80A.[25]

The Commission agrees with the Broker-Dealers that care needs to be exercised by the NYSE in its interpretation of the proposed definition of index arbitrage so that the collar restrictions are not applied to activities that are not typically associated with index arbitrage and not reasonably implied by the language of Rule 80A. The Commission also agrees with the Broker-Dealers that a basis trade would be subject to Rule 80A only if the trade otherwise satisfies all of the conditions of the definition of index arbitrage contained in Supplementary Material .40.[26]

The Commission understands that the NYSE regulatory staff has been diligent in working with program trading firms over the past few years to clarify which types of intermarket trading strategies are subject to the collar provisions of Rule 80A and the Commission urges the Exchange to continue these efforts. In the long term, the Commission believes that the best resolution of the definitional issues raised by the Broker-Dealer would be to have the Exchange reassess the overall rationale for Rule 80A's restrictions on selected intermarket trading stragies.

V. Conclusion

For the foregoing reasons, the Commission finds that the amendments to NYSE Rule 80A are consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–98–45) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–4117 Filed 2–18–99; 8:45 am]

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[21] Neuberger Letter at 1, supra note 4.

[22] This position was reflected in a joint letter issued by the Working Group to Richard Grasso, NYSE Chairman and Chief Executive Officer, dated May 7, 1998 (''Working Group Joint Letter''), as well as in the Working Group Staff Report on Circuit Breakers, issued on August 18, 1998 (''Working Group Staff Report''), at 21.

[23] *See* Working Group Staff Report at 21.

[24] The proposed Supplementary Material .40 states that, for purposes of Rule 80A, ''index arbitrage'' means a trading strategy in which pricing is based on discrepancies between a ''basket'' or group of stocks and the derivative index product (*i.e.*, a basis trade) involving the purchase or sale of a basket or group of stocks in conjunction with the purchase or sale, or intended purchase or sale, of one or more derivative index products in an attempt to profit by the price difference between the basket or group of stocks and the derivative index products. The inclusion of some forms of basis trading for the application of the index arbitrage limitations of Rule 80A was reflected in the NYSE Information Memorandum 92–23 (August 28, 1992) (''1992 Memo'').

[25] Broker-Dealer Letter at 1–2, supra note 4.

[26] *Id.* at 3.

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41051; File No. SR–PCX–98–41]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Its Remote Trading Access Program for Specialists

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 September 4, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change and file an amendment thereto on January 21, 1999,[3] 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 is proposing to adopt a Remote Trading Access Program for Specialists (''Program'') under which Registered PCX Specialists will be permitted to conduct their regular trading activities from off the Trading Floor, at a remote location. Below is the text of the proposed rule, which is entirely new.

* * * * *

Remote Trading Access Program

Rule 5.38(a). The Remote Trading Access Program allows Registered PCX Specialists to conduct their regular trading activities from off the Trading Floor, at remote locations, subject to the approval of the Equity Floor Trading Committee. Specialists participating

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter, dated January 20, 1999, from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX to S. Kevin An, Special Counsel, Division of Market Regulation, Commission (''Amendment No. 1''). Among other things, Amendment No. 1 made several technical corrections and also explained how the Exchange will conduct surveillance of Remote Specialists. The substance of Amendment No. 1 is incorporated into this Notice.

in the program (''Remote Specialists'') will be linked to the Trading Floors via a telecommunications network using private lines.

(b) Unless otherwise specified, all of the PCX Rules and provisions of the PCX Constitution will apply to the activities of Remote Specialists. In particular, Remote Specialists must meet all of the obligations of Registered Specialists pursuant to PCX Rule 5 and the Equity Floor Procedure Advices, provided that the following rules will not apply to Remote Specialists: EFPA 1–A, EFPA 1–B and EFPA 1–C. In addition, Remote Specialists will not be required to make their markets known in an audible tone pursuant to Rules 5.5(a) and 5.30(a).

(c) Trading Floor Definition. For purposes of Rules 4.2, 5.1(e), 5.1(f), 5.6(d), 5.6(e), 5.8(a), 5.8(c), 5.8(e), 5.8(k), 5.10, 5.11(c), 5.12(b), 5.13(g), 5.13(h), 5.14(a), 5.14(b), 5.16(a), 5.20 Com. .01–.02, 5.21(a)(1), 5.23(a), 5.25(a), 5.29(d), 5.29(f), 5.29(g), 5.30(b), 5.30(c), 5.30(d), 5.31(a)–(b), 5.33(c), 5.51(b), 5.51(n), 5.51(o), 5.53(a)–(b), 5.53(e) and 5.53(g), the terms ''floor'' and ''trading floor'' will include both the physical trading floors in San Francisco and Los Angeles, as well as the electronic facilities of the Exchange at remote locations.

(d) Approval Process. Only Specialists who are registered with the Exchange pursuant to Rule 5.27 will be eligible to participate in the Program. The Equity Floor Trading Committee (''EFTC'') will select from among the applicants and will determine which candidates are best suited to participate in the Program. In making its selections, the EFTC will consider the following factors: (1) past experience of the applicant, including the length of time that the applicant has served as a Specialist on the Exchange or on another exchange, and the nature of the applicant's activities as a Specialist on the Exchange or on another exchange; (2) recent specialist performance ratings of the applicant (including all available evaluation scores for the last eight quarters); (3) the applicant's disciplinary history; and (4) any other relevant factors that the EFTC may consider.

(e) Evaluation Process. Remote Specialists will be evaluated pursuant to Rule 5.37.

(f) Pilot Program. The Remote Trading Access Program will be implemented in three phases. In Phase I, four Specialists (two in San Francisco and two in Los Angeles) will conduct their regular trading activities at locations off the Trading Floor itself but in close proximity within the building—for example, in a room adjacent to the Trading Floor. Unless it is necessary, these specialists will not engage in face-to-face interactions with other floor members during this phase, so that the Exchange may identify and correct any problems that may arise. Phase I will last for approximately one month. In Phase II, which will last up to six months, the Exchange will permit up to twenty Specialists to conduct their trading activities from locations away from the Exchange's premises. These locations may include a home or an office. In Phase III, the Exchange will permit an unlimited expansion of the Program.

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

(a) *Purpose.*

The PCX currently has two Equities Trading Floors, one in San Francisco and one in Los Angeles. There are generally two Specialists continuously making markets during trading hours in each equity security traded on the Exchange. Implementation of the Program will be the first step of an expansion of the Exchange's two-floor system, to permit electronic trading from multiple locations both on and off the Trading Floors. Having operated two Equities Trading Floors since 1957, the Exchange is well experienced in coordinating market quotations for multiple specialists, in executing trades on behalf of parties located in different cities, and in providing administrative support from one city to members located in another city.

Under the Program, the Exchange will establish a telecommunications network using private lines to link the Remote Specialists to the Trading Floors. Remote Specialists will have the same access to the Exchange's trading system (''P/COAST'') as Specialists located on the Trading Floors. Remote Specialists will also have access to the Intermarket Trading System (''ITS'') via the Regional Computer Interface (''RCI'') feature of P/COAST. In addition, Remote Specialists will routinely communicate with Exchange staff and persons on the Trading Floors by telephone, e-mail and facsimile.

The Exchange believes that the rule change would significantly expand the structure on which equities trading is based on the Exchange. Accordingly, the Exchange is proposing to expand the meaning of the term ''trading floor,'' as used in certain of the Rules on Equities trading, so that it will include both the Trading Floors and the electronic facilities of the Exchange at remote locations. For example, Rule 5.1(e), which currently provides that non-members ''shall not consummate transactions on the trading floor,'' would be expanded to prohibit non-members from consummating transactions either on the Trading Floor or through the electronic facilities of the Exchange.

1. Implementation: The Exchange is proposing to implement the Program in three phases. In Phase I, four Specialists (two in San Francisco and two in Los Angeles) will conduct their regular trading activities at locations off the Trading Floor itself but in close proximity within the building, for example, in a room adjacent to the Trading Floor. Unless it is necessary, these Specialists will not engage in face-to-face interactions with other floor members during this phase, so that the Exchange may identify and correct any problems that may arise. Phase I will last for approximately one month. In Phase II, which will last up to six months, the Exchange will permit up to twenty Specialists to conduct their trading activities from locations away from the Exchange's premises. These locations may include a home or an office. Finally, in Phase III, the Exchange will permit an unlimited expansion of the Program.

2. Selection Process: Only Specialists who are registered with the Exchange pursuant to Rule 5.27 will be eligible to participate in the Program. The Equity Floor Trading Committee (''EFTC'') will select from among the applicants and will determine which candidates are best suited to participate in the Program. In making its selections, the EFTC will consider the following factors: (a) Past experience of the applicant, including the length of time that the applicant has served as a Specialist on the Exchange or on another exchange, and the nature of the applicant's activities as a Specialist on the Exchange or on another exchange; (b) recent specialist performance ratings of the applicant (including all available evaluation scores for the last eight quarters; (c) the applicant's disciplinary history; and (d) any other relevant factos that the EFTC may consider.

3. Order Execution: It is anticipated that the vast majority of orders executed by a Remote Specialist will be orders entered electronically through the Exchange's Member Firm Interface (''MFI'') or through Floor Input.[4] Remote Specialists will execute orders in the same manner as Registered

[4] However, a relatively small number of orders will continue to require interaction between a Floor Broker and all of the Specialists in the issue.

Specialists. All orders entered through the MFI or Floor Input will be entered into the Exchange's Consolidated Limited Order Book (''CLOB''), which will ensure that they are afforded priority pursuant to Exchange Rules. Incoming market and marketable limit orders are immediately excecuted against orders in the CLOB based on price and time priority. However, before any market or marketable limit order is executed, P/COAST will display it for 15 seconds on the terminal of the Specialist who is representing it , so that he or she will have an opportunity to improve the execution price. Incoming orders other than market and marketable limit orders will be maintained in the CLOB, but will be represented by the Specialist designated to receive them. If a Specialist manually executes a limit order that does not have priority, P/COAST will generate a message that a priority violation has been committed so that the Specialist can take corrective action immediately. In addition, the Exchange's Surveillance Department will receive a report of the priority violation.

4. Remote Specialist Obligations: Except as otherwise provided, Remote Specialist will be required to meet all of the obligations of a PCX Registered Specialist, including the following:

- Remote Specialist will be required to make continuous two-sided markets during regular trading hours.
- They must engage in a course of dealings for their own accounts to assist in the maintenance, insofar as reasonably practicable, of a fair and orderly market on the Exchange, and must engage, to a reasonable degree under the existing circumstances, in dealings for their own accounts in round-lots when lack of price continuity or lack of depth in the round-lot market or temporary disparity between supply and demand in either the round-lot or the odd-lot market exists or is reasonable to be anticipated. (Rule 5.29(f))
- They will be responsible for the execution of all orders that they have accepted. (Rule 5.29(f))
- They will be required to remain within the immediate vicinity of their P/COAST terminals commencing 30 minutes before the opening and throughout the trading day.[5]
- They may be required to remain one or more clerks at their remote locations. (Rule 5.28(e))
- They will be required to prepare trading tickets or other appropriate records relating to orders. (Rules 5.13(c), 528(b) and 5.29(a))
- They will perform their obligations as odd-lot dealers in securities pursuant to Rule 5.34.
- The performance of Remote Specialists will be evaluated pursuant to PCX Rule 5.37 and they will be subject to all procedures and restrictions that may be based on their overall evaluation ratings.
- They will be required to meet the same capital requirements and net capital requirements as Registered Specialists. These include the requirements set forth in PCX Rule 2.2(a) and SEC Rule 15c3–1.
- They will be subject to all rules, policies and procedures governing the ITS. (Rules 5.20–5.23)

5. Exemptions from PCX Rules: Remote Specialists are exempt from complying with the following Rules that otherwise apply to Specialists located on the Trading Floors:

- They will be required to vocalize bids or offers. (Rule 5.5(a) and 5.30(a))
- They will not be subject to the applicable rules on floor decorum, floor conduct, badges, and visitors. (EFPA 1–A through 1–C).

6. Technical Support: The Exchange will provide Remote Specialists with hardware and software maintenance and support through a third party vendor. The vendor will provide routine service and repairs of the Remote Specialists' equipment. PCX staff will also provide informational support either over the telephone or by e-mail.

7. P/COAST Service Center: The P/COAST Service Center will provide support in answering status inquiries from member firms, Specialist and floor brokers, enters trading corrections; entering ''exception'' orders that would otherwise be defaulted from the MFI (*e.g.*, order with special settlements and orders for non-multiply-listed stocks); and general assistance during fast markets.

8. ITS Staff Support: Remote Specialists will receive the same ITS Staff support as Registered Specialists. Exchange staff will provide support by telephone, fax or e-mail, including; responding to complaints and facilitating problem resolution (*e.g.*, where trade-throughs are alleged); responding to general inquiries; performing ITS trade corrections; coordinating with Securities Industry Automation Corporation in response to system problems; processing trading halt requests and instructions; and providing general support for P/COAST ITS functions.

9. PCX Surveillance: The Exchange believes that its current surveillance procedures and automated reports already cover the vast majority of remote trading surveillance issues, including priority violations, frontrunning, and other rule violations. Exchange staff will communicate telephonically with the Remote Specialist during the course of the trading day to conduct routine surveillance activities or to convey ruling of Floor Officials or the EFTC affecting the Remote Specialist. With regard to surveillance to assure that remote specialists will be present throughout the trading day, the Exchange believes that this can be conducted partly by confirming that the Remote Specialist is maintaining two-sided markets.

The Exchange also expects to develop a report to identify instances in which a Remote Specialist fails to input quotes, and to conduct ''spot'' checks by calling or visiting Remote Specialists at their locations.

10. Communications with Floor Officials: Remote Specialists will communicate by telephone with Floor Officials in particular rulings.

11. Post Cashiering: The Post Cashiering Department will maintain telephonic and other communication with the Remote Specialist to verify money settlement; to activate specialist lines of credit; to initiate or re-transmit ''buy-ins'' for failed trades; to address issues regarding specialist post capital requirements; and otherwise to resolve question and problem on back office functions of trade clearance and settlement.

12. PCX Administrative Information—Bulletins and Reports: The Exchange will install an electronic mechanism to distribute routine reports, bulletins and memoranda that are distributed by PCX staff. Prior to the opening, and in some cases during the trading day, the Exchange will disseminate the following reports to the Remote Specialists: the Trade Blotter, Security Ledgers, Bulletins, MIS Reports, SPE Reports, and other documents. Other PCX bulletins and memoranda, as well as business and personal mail, will be forwarded to the Remote Specialists as appropriate.

13. Disaster Recovery/Contingency: As noted previously in the section on ''Technical Support,'' third party vendors will provide Remote Specialists with routine service and repairs of hardware and software. In addition, the remote operation will have a

[5] The Exchange notes that Remote Specialists who choose not to remain within the immediate vicinity of their P/COAST terminals will be subjecting themselves to significant market risk as a result of executions against incoming orders and other orders in the CLOB. They will also be subject themselves to poor performance ratings pursuant to PCX Rule 5.37 if they fail to keep their markets current.

configuration that includes backup capabilities and on-site resources in the event of local system or telecommunication problem or disaster. However, if a Remote Specialist's service is interrupted and cannot be promptly restored, PCX staff will either re-route the Remote Specialist's order flow to a Specialist who is affiliated with the Remote Specialist or will provide sufficient support and assistance to ensure that the Remote Specialist is adequately informed of the status of market and marketable limit orders that are active, so that the Remote Specialist can provide directions for their handling.

(b) *Basis.*

The Exchange believes the proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to perfect the mechanisms of a free and open market, to promote just and equitable principles of trade, to facilitate transactions in securities, and in general, to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with Section 11A(a)(1)(B) of the Act, which states that new data processing and communications techniques create the opportunity for more efficient and effective market operations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will—

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–41 and should be submitted by March 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–4114 Filed 2–18–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0237]

Bayview Capital Partners, L.P.; Notice of Issuance of a Small Business Investment Company License

On June 19, 1998, an application was filed by Bayview Capital Partners, L.P., at 641 East Lake Street, Suite 230, Wayzata, MN 55391, the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0237 on December 31, 1998, to Bayview Capital Partners, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 11, 1999.

Don A. Christensen,

Associate Administrator For Investment.

[FR Doc. 99–4046 Filed 2–18–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 01/71–0373]

Caduceus Capital Health Ventures, L.P.; Notice of Issuance of a Small Business Investment Company License

On April 21, 1998, an application was filed by Caduceus Capital Health Ventures, L.P, at 101 Arch Street, Suite 1950, Boston, MA 02110 with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/71–0373 on December 18, 1998, to Caduceus Capital Health Ventures, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 11, 1999.

Don A. Christensen,

Associate Administrator For Investment.

[FR Doc. 99–4044 Filed 2–18–99; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0275]

Capital International SBIC, L.P.; Notice of Issuance of a Small Business Investment Company License

On July 10, 1998, an application was filed by Capital International SBIC, L.P., at One S.E. Third Avenue—22nd Floor, Miami, FL 33131, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04–0275 on December 4, 1998, to Capital International SBIC, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 11, 1999.

Don A. Christensen,

Associate Administrator For Investment.

[FR Doc. 99–4043 Filed 2–18–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 01/71–0371]

First New England Capital 2, L.P.; Notice of Issuance of a Small Business Investment Company License

On May 5, 1998, an application was filed by First New England Capital 2, L.P., at 100 Pearl Street, Hartford, CT 06103, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/71–0371 on November 27, 1998, to First New England Capital 2, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 11, 1999.

Don A. Christensen,

Associate Administrator For Investment.

[FR Doc. 99–4042 Filed 2–18–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0235]

Key Mezzanine Capital Fund I, L.P.; Notice of Issuance of a Small Business Investment Company License

On June 26, 1998, an application was filed by Key Mezzanine Capital Fund I, L.P., at 10th Floor, Banc One Building, 600 Superior Avenue, Cleveland, OH 44114, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0235 on October 5, 1998, to Key Mezzanine Capital Fund I, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 11, 1999.

Don A. Christensen,

Associate Administrator For Investment.

[FR Doc. 99–4045 Filed 2–18–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0274]

NationsBanc Capital Investors SBIC, L.P.; Notice of Issuance of a Small Business Investment Company License

On June 19, 1998, an application was filed by NationsBanc Capital Investors SBIC, L.P., at 100 North Tryon Street—10th Floor, Charlotte, NC 28255, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04–0274 on December 7, 1998, to NationsBanc Capital Investors SBIC, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 11, 1999.

Don A. Christensen,

Associate Administrator For Investment.

[FR Doc. 99–4041 Filed 2–18–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0236]

Norwest Venture Partners VII, L.P.; Notice of Issuance of a Small Business Investment Company License

On March 25, 1998, an application was filed by Norwest Venture Partners VII, L.P., at 2800 Piper Jaffray Tower, Minneapolis, MN 55402, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0236 on November 27, 1998, to Norwest Venture Partners VII, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 11, 1999.

Don A. Christensen,

Associate Administrator For Investment.

[FR Doc. 99–4040 Filed 2–18–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0583]

RBC Equity Investments, Inc.; Notice of Issuance of a Small Business Investment Company License

On March 25, 1998, an application was filed by RBC Equity Investments, Inc., at One Liberty Plaza, New York, NY 10002, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0583 on December 11, 1998, to RBC Equity Investments, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 11, 1999.

Don A. Christensen,

Associate Administrator For Investment.

[FR Doc. 99–4039 Filed 2–18–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–0214]

Virginia Capital, L.P.; Notice of Issuance of a Small Business Investment Company License

On August 28, 1998, an application was filed by Virginia Capital, L.P., at 950 12th Street, Suite 400, Richmond, VA 23219, with the Small Business Administration (SBA) pursuant to section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03–0214 on December 2, 1998, to Virginia Capital, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 11, 1999.

Don A. Christensen,

Associate Administrator For Investment.

[FR Doc. 99–4038 Filed 2–18–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0417]

Viridian Capital, L.P.; Notice of Issuance of a Small Business Investment Company License

On June 18, 1998, an application was filed by Viridian Capital, L.P., at 220 Montgomery Street, Suite 946, SanFrancisco, CA 94104, the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 C.F.R. 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/79–0417 on December 4, 1998, to Viridian Capital, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 11, 1999.

Don A. Christensen,

Associate Administrator For Investment.

[FR Doc. 99–4047 Filed 2–18–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 01/71–0372]

Zero Stage Capital VI, L.P.; Notice of Issuance of a Small Business Investment Company License

On June 23, 1998, an application was filed by Zero Stage Capital VI, L.P., at 101 Main street—17th Floor, Cambridge, MA 02142, the Small Business Administration (SBA) pursuant to section 107.300 of the Regulations governing small business investment companies (13 CFR 107.300 (1997)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/71–0372 on November 30, 1998, to Zero Stage Capital VI, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 11, 1999.

Don A. Christensen,

Associate Administrator For Investment.

[FR Doc. 99–4037 Filed 2–18–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9992]

State of Alaska; Amendment #1

The above-numbered declaration is hereby amended to include the Regional Education Attendance Areas of Chugach (#21) and the Aleutian Islands (#8), as well as the contiguous Municipality of Anchorage, the City and Borough of Yakutat, and Adak Region (REAA #10) in the State of Alaska as economic injury disaster areas due to the effects of the warm water current known as El Nino beginning in May of 1997. Eligible small businesses and small agricultural cooperatives without credit available elsewhere that were affected by this disaster may file applications for economic injury assistance until the close of business on June 17, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853–4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: February 5, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–4035 Filed 2–18–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3154]

State of Arkansas (Amendment #1)

In accordance with notices received from the Federal Emergency

In accordance with notices received from the Federal Emergency Management Agency dated January 27 and 31, and February 1 and 2, 1999, the above-numbered Declaration is hereby amended to include Clay, Faulkner, Greene, Jefferson, Lonoke, Miller, Monroe, and Poinsett Counties in the State of Arkansas as a disaster area. This declaration is further amended to include damages caused by flooding in addition to severe storms, tornadoes, and high winds, and to establish the incident period for this disaster as beginning on January 21, 1999 and continuing through January 31, 1999.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Arkansas, Cleveland, Conway, Craighead, Hempstead, Lafayette, Lincoln, Little River, Mississippi, Phillips, Randolph, and Van Buren Counties in Arkansas; Butler, Dunklin, and Ripley Counties in Missouri; Bowie and Cass Counties in Texas, and Bossier and Caddo Parishes in Louisiana. Any 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 March 23, 1999, and for economic injury the termination date is October 25, 1999.

Economic injury numbers are 9B04 for Missouri, 9B05 for Texas, and 9B06 for Louisiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 4, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–4034 Filed 2–18–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3159]

State of Indiana

Howard and Wayne Counties and the contiguous counties of Carroll, Cass, Clinton, Fayette, Grant, Henry, Miami, Randolph, Tipton, and Union in the State of Indiana constitute a disaster area as a result of damages caused by flooding that occurred on January 21 and 22, 1999. Applications for loans for physical damages from this disaster may be filed until the close of business on April 8, 1999 and for economic injury until the close of business on Nov. 5, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.375
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.188
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.000
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 315906 and for economic injury the number is 9B0700. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared under a separate declaration for the same occurrence.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 5, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–4036 Filed 2–18–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3153]

State of Tennessee (Amendment #1)

In accordance with notices received from the Federal Emergency Management Agency dated February 1, 1999, the above-numbered Declaration is hereby amended to include Fayette and Houston Counties in the State of Tennessee as a disaster area as a result of damages caused by severe storms, tornadoes, and high winds. This declaration is further amended to establish the incident period for this disaster as beginning on January 17, 1999 and continuing through February 1, 1999.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Shelby County, Tennessee and Marshall County, Mississippi. Any 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 March 19, 1999, and for economic injury the termination date is October 19, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: February 4, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–4033 Filed 2–18–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2973]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea and Associated Bodies; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 10:00 A.M. on Monday, March 15, 1999 in Room 6319, at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the Flag State Implementation (FSI) Subcommittee on Safety of Life at Sea (SOLAS) and associated bodies of the International Maritime Organization (IMO) which is scheduled for March 22–26, 1999, at the IMO Headquarters in London. At this meeting, the U.S. position on documents submitted for consideration at the seventh session of the FSI Subcommittee will be discussed.

Among other things, the items of particular interest are:

1. Implementation of IMO instruments
2. Survey and certification
3. Reporting on non-compliance with IMO instruments
4. Casualty statistics and analysis
5. Port State Control
6. Implications arising when a vessel loses the right to fly the flag of a State.

Members of the public may attend the meeting up to the capacity of the room.

Interested persons may seek information by contacting Mr. David Deaver, U.S. Coast Guard Headquarters (G–MOC–4), 2100 Second Street, SW, Room 1116, Washington, DC 20593–0001; telephone (202) 267–0502; email: ddeaver@comdt.uscg.mil.

Dated: February 12, 1999.

Stephen M. Miller,

Executive Secretary Shipping Coordinating Committee.

[FR Doc. 99–4161 Filed 2–18–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 2974]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will hold a meeting on March 30, 1999 from 1:00 pm to 5:00 pm to obtain public comment on issues to be addressed at the April 19–24, 1999 United Nations Educational, Scientific and Cultural Organization (UNESCO) meeting of governmental experts on the draft Convention on Underwater Cultural Heritage.

The meeting will be held at the Department of State located at 2201 C Street, NW, Washington, DC 20250, East Auditorium-Room 2925. Interested members of the public are invited to attend, up to the capacity of the room.

For further information, please contact Mr. Robert Blumberg, Office of Oceans Affairs, telephone (202) 647–4971. To expedite entry into the Department of State, please provide name, social security number, and date of birth to Linda Catlett (202) 647–3880, at least one week prior to the meeting.

Dated: February 8, 1999.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 99–4162 Filed 2–18–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Finding Document

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Environmental finding document: Finding no significant impact; notice.

SUMMARY: The Federal Aviation Administration (FAA) prepared an Environmental Assessment (EA), evaluating a Sea Launch Limited Partnership (SLLP) proposal to construct and operate a mobile, floating launch platform in international waters in the east-central equatorial Pacific Ocean. After reviewing and analyzing currently available data and information on existing conditions, project impacts, and measures to mitigate those impacts, the FAA Associate Administrator for Commercial Space Transportation (AST) finds that licensing the operation of the proposed launch activities is not a major Federal action that would significantly affect the quality of the human environment within the meaning of Executive Order (E.O.) 12114, Environmental Effects Abroad of Major Federal Actions, the application of which is guided by the National Environmental Policy Act (NEPA) of 1969. Therefore, the preparation of an Environmental Impact Statement (EIS) is not required pursuant to E.O. 12114, and AST is issuing an Environmental Finding Document Finding No Significant Impact.

The Environmental Assessment for the Sea Launch Project, dated January 1999, is incorporated by reference and attached to this document. This EA describes the purpose and need for the proposed project and describes the alternatives considered during the preparation of the document. The EA describes the environmental setting and analyzes the impact on the applicable human environment as a consequence of the proposed project.

For a Copy of the Environmental Assessment for the Sea Launch Project/ Contact: Mr. Nikos Himaras, Office of the Associate Administrator for Commercial Space Transportation, Space System Development Division, Suite 331/AST–100, 800 Independence Ave., S.W., Washington, D.C. 20591; phone (202) 267–7926, or refer to the following Internet address: http://ast.faa.gov

Action: If a foreign entity controlled by a U.S. citizen conducts a launch outside the United States and outside the territory of a foreign country, its launch must be licensed. 49 U.S.C. § 70104(a)(3). The FAA determined that SLLP is a foreign entity controlled by a U.S. citizen, Boeing Commercial Space Company. 49 U.S.C. § 70102(1)(C); 14 CFR § 401.5. Because SLLP proposes to launch in international waters, outside the territory of the United States or a foreign country, SLLP must obtain an FAA license to launch. Licensing a launch in the environment outside the United States, its territories, and possessions is a Federal action requiring environmental analysis by the FAA in accordance with E.O. 12114 the application of which is guided by the National Environmental Policy Act of 1969. Upon receipt of a completed license application, the Associate Administrator for Commercial Space Transportation must determine whether or not to issue a license to SLLP to launch. Environmental findings are required for a license evaluation. In this instance, the proposed action is the licensing by the FAA of two launches by the SLLP at the specified launch location. The environmental finding and analysis covers up to six launches per year. SLLP proposes to conduct three (3) launches in the first year of operation. Pursuant to its requirements, the FAA will reevaluate the adequacy of existing environmental documentation if new circumstances develop.

SLLP proposes to conduct commercial space launch operations from a mobile, floating platform in international waters in the east-central equatorial Pacific Ocean. The SLLP is an international commercial venture formed to launch commercial satellites. It is organized under the laws of the Cayman Islands, BWI, and the partnership members are Boeing Commercial Space Company of the United States; RSC Energia of Russia; KB Yuzhnoye of the Ukraine; and Kvaerner Maritime a.s of Norway.

The SLLP would use a launch platform (LP) and an assembly and command ship (ACS). A floating oil drilling platform was refurbished in Norway to serve as the self-propelled LP. The ACS was built in Scotland specifically for Sea Launch operations.

A Zenit–3SL expendable launch vehicle fueled by kerosene and liquid oxygen would be the only launch vehicle used at the Sea Launch facilities. In the first year of operation, SLLP intends to conduct three (3) launches. Six launches are proposed for each subsequent year. The launches are proposed to occur at the equator in the vicinity of 154 degrees west to maximize inertial and other launch efficiencies. The distances from South America (over 7,000 km) and from the nearest inhabited island, Kiritimati (Christmas Island), (340 km) are intended to ensure that Stage 1 and Stage 2 would drop well away from land, coastal populated areas, and exclusive economic zones. The FAA evaluated open sea areas, the Kiribati Islands, the Galapagos Islands and used a U.S. Navy environmental analysis of the Home Port in Long Beach, California in assessing potential environmental impacts from the proposed launch activities. This FAA environmental study incorporates by reference an environmental assessment conducted by the Navy on the Home Port Facility, which EA resulted in 1996 in a Finding of No Significant Impact. The Navy environmental assessment, also known as the Navy Mole EA, covers SLLP Home Port activities. This FAA environmental study focused on Sea Launch activities conducted at the launch location, activities that may impact the launch range during normal launches, and failed missions. Sea Launch payloads (i.e., commercial satellites) are not included in this evaluation because they will be fueled and sealed at the Home Port and will only become operational at an altitude of over 35,000 km. Potential environmental impacts of payloads are not discussed here except with regard to failed mission scenarios.

Environmental Impacts

Air Quality

Pre-launch activities that may impact air quality include LP and ACS positioning, final equipment and process checks, coupling of fuel lines to the integrated launch vehicle (ILV) prior to fueling, the transfer of kerosene and liquid oxygen (LOX) fuels, and decoupling of the fueling apparatus. Normal launch operations would result only in an incidental loss of kerosene and LOX in vapor form. This loss of vapors would dissipate immediately and form smog. Although unlikely, an unsuccessful ignition attempt would result in automatic defueling of the ILV. Defueling would release LOX vapor and approximately 70 kg of kerosene when the fuel line is flushed. The LOX would dissipate and the vapor and kerosene would evaporate rapidly, dissipate and degrade, thereby having little effect on the surrounding environment. The probability of an unsuccessful ignition attempt resulting in defueling is 4 ×

10^{-4}. Potential environmental impacts from launch and flight activities would include spent stages, residual fuels, combustion emissions, and thermal energy and noise released into the atmosphere and ocean. During normal launches, any impacts would be distributed across the east-central equatorial pacific region in a predictable manner. Kerosene released during descent of a failed launch attempt would evaporate within minutes. Any residual LOX released during a failed launch attempt would instantly evaporate without consequence.

The proposed launch site is relatively free of combustion source emissions. That fact coupled with the size of the Pacific Ocean and air space allows most launch emissions to dissipate rapidly. Launch effects on the boundary layer up to 2,000 meters would be short term and cause minimal impacts. Emissions occurring in the atmospheric boundary layer would be dispersed away from the islands by winds and local turbulence caused by solar heating. Because dispersion occurs within hours, the planned six missions per year would preclude cumulative effects.

All emissions to the troposphere would come from first stage combustion of LOX and kerosene. Photochemical reactions involving Sea Launch Zenit rocket emissions would form carbon dioxide (CO_2) and oxygenated organic compounds. Nitrogen oxide in the exhaust trail would form nitric and nitrous acids. Cloud droplets and atmospheric aerosols efficiently absorb water-soluble compounds such as acids, oxygenated chemical compounds, and oxidants, thereby reducing impacts to insignificant levels. Approximately 36,100 kg of carbon monoxide (CO) would be released into the troposphere during the first 55 seconds of flight resulting in an estimated CO concentration at Christmas Island of 9.94 mg/m^3. This release is well below the Occupational Safety and Health Administration Permissible Exposure Limit (PEL) of 55 mg/m^3, the Environmental Protection Agency (EPA) level of concern of 175 mg/m^3 and the industry Emergency Response Planning Guideline–2 of 400 mg/m^3. Nitrogen compounds in the exhaust trail of liquid propellant rockets would cause a temporary reduction of atmospheric ozone, with return to near background levels within a few hours. Models and measurement of other space systems comparable to Sea Launch indicate that these impacts would be temporary, and the atmosphere is capable of replacing the destroyed ozone within a few hours by migration or regeneration. The high-speed movement of the Zenit–3SL rocket and the re-entry of the stages after their use may impact stratospheric ozone. The exact chemistry and relative significance of these processes are not known but are believed to be minimal. Impacts to air quality would be minimal. Those impacts that do occur would be of short duration and would naturally reverse themselves over a short period of time.

Waste

Post-launch operations at the launch site involve cleaning the LP for subsequent launches. Cleaning would result in particulate residues being washed from the LP with fresh water. Only a few kilograms of debris and residues would be generated. These materials would be collected and handled onboard as solid waste for later disposal at the Home Port. Impact locations for the spent rocket stages would be the open ocean. The current descriptions of the ocean environment, including physical, chemical and biological processes, apply equally to the launch location and the approximate locations of spent stage impacts. Nutrient and biological productivity levels are largely equivalent (in statistical terms) at the launch location and points further east where Stage 1 and Stage 2 fall; one has to be much closer to the Galapagos Islands to find meaningfully higher levels of productivity and biological activity.

Noise

Noise from a launch is calculated at approximately 150 decibels at 378 meters with the equivalent sound intensity in the water estimated at less than 75 decibels. Due to the small number of launches per year and scarcity of higher trophic level organisms, noise impacts are expected to be negligible.

Biological and Ecological Impacts

Pre-launch preparations includes spraying fresh water from a tank on the LP into the LP's flame bucket, which would dissipate heat and absorb sound during the initial fuel burn. There would be minor impacts to the ecosystem because of the input of heated freshwater. However, the natural variation in plankton densities would ensure rapid and timely recolonization of plankton in the water surrounding the LP.

Launch and flight activities may impact the ocean environment by depositing spent stages and residual fuels. During normal launches, these impacts would occur and be distributed across the east-central equatorial pacific region. It is unlikely that any falling debris would impact animals, although a small number of marine organisms would be impacted. Plankton immediately beneath any kerosene sheen would likely be killed. However, overall plankton mortality would be minimal as the population densities are greatest around 30 meters below the surface. Fuel dispersed from Stages 1 and 2 would evaporate in minutes and within a few thousand feet, as in the case when a pilot lightens a plane by dumping jet fuel. The small amount of kerosene that might reach the ocean surface would evaporate and decompose within hours.

Two severe accident scenarios were evaluated and determined to cause only minimal damage to the environment. The first case evaluated ILV failure and explosion on the LP with the ILV being fully fueled and ready for launch. This failure would result in an explosion of the ILV fuels scattering pieces of the ILV and LP up to 3 km away. Particulate matter from the smoke plume would drift downwind and be distributed a few kilometers before dissipating. Plankton and fish in the immediate area would be killed over the course of several days. Thermal energy would be deflected and absorbed by the ocean and 100% of the fuels would be consumed or released into the atmosphere through combustion or evaporation. Disruption to the atmosphere and the ocean would be assimilated and the environment would return to pre-accident conditions within several days. The second scenario evaluated involved failure of the rocket's upper stage. Loss and re-entry of the upper stage and payload would result in materials and fuels being heated by friction and vaporizing. Remaining objects would fall into the ocean causing a temporary disruption as the warm objects cooled and sank. The risk of debris striking any populated areas or ecological habitats is very remote. Sea Launch selected a more northerly route to further reduce the risk to the Galapagos Islands. The risk of an impact to either Wolf or Darwin Islands would only occur in the unlikely event of a scenario in which Stage 3 (the upper stage) suffers a specific type of failure during two specific time intervals of around .25 second each. In the event of mid-flight Stage 3 failure, approximately 99% of the satellite and its components would burn up upon re-entry to the atmosphere. Thus, the total mass of any objects reaching Wolf or Darwin Islands would be small. The probability of this occurring is approximately 8 in 100,000 launches.

Socioeconomics

The SLLP would occupy the launch location for two to seven days during each launch cycle. Due to the brief period of time that the LP and the ACS will be present at the launch location, social and economic impacts to the Kiribati are considered negligible. The brief duration of launch activities, and the relative degree of isolation of the launch location provides a barrier between Sea Launch and cultural and economic character of the Kiribati society. The baseline plan for operations does not include any use of facilities based on any of the Kiribati Islands. Impacts to the Islands, associated with employees transiting Christmas Island on an emergency basis, would be positive given that the expenditures would be an addition to the local economy.

Health and Safety

FAA's licensing process will examine safety aspects of the proposed launch operations.

The SLLP adopted as a population protection risk criteria, an upper limit of one in a million casualty expectation. Public safety assurance and analysis issues are discussed in the SLLP document ''Sea Launch System Safety Plan.'' The launch location was shifted away from South America to ensure that Stage 1, the fairing, and Stage 2 would drop well away from land and coastal commercial activity. The instantaneous impact point speed would increase over South America, decreasing the dwell time and potential risk as the rocket traverses land. The launch area, in the vicinity of 154 degrees west was selected because it is located outside of the Kiribati 320 km exclusive economic zone and is roughly 340 km from the nearest inhabited island.

Threatened and Endangered Species

There are no known threatened and endangered species that will be impacted by the proposed launches.

Archeological and Cultural Resources

The launches, proposed to occur in the open ocean, will not impact archeological or cultural resources.

Cumulative Impacts

There are no other foreseeable planned developments in the area of the proposed launch location at this time, therefore, no expected cumulative impacts are expected. The Navy Mole facility is currently underutilized as compared to its historical level of operation and development. Sea Launch activities will generate additional work and revenue and the Home Port facility may be the impetus for other development in the area.

Other Environmental Considerations

Home Port

The design, permitting, construction, and operation of the Home Port would be managed under the jurisdiction of the state, regional, county, municipal, and port authorities of the Port of Long Beach, California. The Navy, as part of the California Environmental Quality Act Process, submitted its Mole EA to the California Coastal Commission for review, which determined the proposed Home Port activities were not inconsistent with the California Coastal Zone Management Program. The Port of Long Beach has approved the construction and operation of the Home Port through the Harbor Development Permit process. One of the standard conditions in the Harbor Development Permit is that SLLP will follow all applicable Federal, state, and local laws and regulations, including those pertaining to safety and environment. The LP, ACS, and satellite tracking ships used to transport the launch vehicle, payload and other materials to the launch site and operate the launch will be subject to and will comply with all applicable environmental and maritime international agreement requirements while traveling to and from, and while at the launch site.

Notice to Mariners

Standard notices to mariners will be broadcast using U.S. Government protocols via INMARSAT–C in the Pacific Ocean Region on Safety Net channel at 1000—1030 and 2200–2230 hours GMT each day starting 5 days prior to each launch. For vessels without INMARSAT–C transceivers, the notice will be broadcast in the HF band by U.S. Coast Guard, Honolulu. For vessels without any receiving equipment (expected to be limited to those operating out of Kiribati ports), the standard notice will be delivered by fax or mail services to Kiribati government authorities and fishing fleet and tour operators for distribution and posting.

Environmental Monitoring Plan

The Environmental Monitoring and Protection Plan is being developed as an integral part of Sea Launch plans for operations at sea, and its implementation involves the participation of both aerospace and marine crews. FAA approval of the Environmental Monitoring Plan is a condition of the launch license. The Plan consists of four elements:

- Visual observation for species of concern.
- Remote detection of atmospheric effects during launch.
- Surface water samples to detect possible launch effects.
- Notices to local mariners.

A separate plan exists for each element to direct specific actions and coordinate the analysis of acquired data.

Public Participation

During the planning phase of the Sea Launch environmental review process, the FAA concluded that public participation was required. It was further decided that the Environmental Assessment and proposed finding document would be made available for public review for a 30-day period. Consequently a list of pertinent entities was compiled to ensure that wide distribution of the documents would be possible. The list included cognizant Federal and State agencies, scientific institutes, trade and environmental organizations and foreign embassies of countries in the area of the proposed action. The documents would also be made available to any organization or member of the public and could also be found in the FAA/AST web site. The public review period commenced on April 23, 1998 via publication of a Notice in the **Federal Register.** During the week preceding this announcement, FAA mailed copies of the documents to all entities on the list. Additional copies were mailed via regular or next-day mail, as requested. The public review and comment period was scheduled from April 23, 1998 until May 26, 1998.

Interest in the project was expressed by a number of South Pacific Nations, Ecuador and the South Pacific Regional Environmental Programme (SPREP). These entities also indicated the need for additional time for internal coordination and consultation. In response to this need, the FAA accepted and addressed all review comments, which arrived after the end of the scheduled public review and comment period.

As part of the public participation program, FAA/AST personnel held face-to-face information exchanges with representatives of Ecuador in Washington, DC. In addition, FAA personnel traveled to the Western Pacific and held similar meetings with representatives of the Republic of Kiribati at Tarawa and with SPREP representatives at Apia, Samoa. Diplomatic representatives from Australia and New Zealand participated at the Apia meeting and Australian representatives met with the FAA in Washington, DC. Numerous meetings,

and information exchanges also took place among FAA/AST personnel and specialists from the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS), Environmental Protection Agency (EPA), National Air and Space Administration (NASA), United States Coast Guard (USCG) and the Department of State (DOS).

The FAA is also making available to the public the Final Sea Launch Environmental Assessment and Environmental Finding Document.

No Action Alternative

Under the No Action alternative the SLLP would not launch satellites from the Pacific Ocean and the Port of Long Beach would remain available for other commercial or government ventures. The goals of 49 U.S.C. Subtitle IX, ch. 701 Commercial Space Launch Activities, would not be realized. Predicted environmental impacts of the proposed launch activities would not occur and the project area would remain in its current state.

Finding

An analysis of the action has concluded that there are no significant short-term or long-term effects to the environment or surrounding populations. After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed Federal action is consistent with the purpose of national environmental policies and objectives as set forth in E.O. 12114 the application of which is guided by the National Environmental Policy Act of 1969 (NEPA) and that it will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation. Therefore, an Environmental Impact Statement for the action is not required.

Issued in Washington, DC on: February 16, 1999.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 99–4276 Filed 2–18–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Of Document Availability of Final Environmental Assessment, Finding of No Significant Impact, and Record of Decision for Jackson Hole Airport, Jackson, Wyoming

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) has released for public and agency information review the Final Environmental Assessment, Finding of No Significant Impact, and Record of Decision for proposed runway safety improvements at Jackson Hole Airport, Jackson, Wyoming.

Purpose of the Environmental Assessment

The purpose of the FAA Environmental Assessment is to document the evaluation of potential environmental impacts associated with providing standard Runway Safety Areas at both ends of the runway, construction and operation of an airport traffic control tower, implementation of a voluntary preferential runway use program, reconstruction of the existing runway length, and installation of runway end identifier lights and other navigational aids at the Jackson Hole Airport, Jackson, Wyoming. The draft environmental assessment was released for public and agency review on September 11, 1998. The comment period ended October 30, 1998.

CONTACT PERSON: For additional information contact Mr. Dennis Ossenkop, Airports Division, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue, S.W., Renton, WA 98055–4056. Any person desiring to review the Final Environmental Assessment, Finding of No Significant Impact, and Record of Decision may do so during normal business hours at the following locations:

Federal Aviation Administration, Airports Division, Room 315, 1601 Lind Avenue, S.W., Renton, Washington

Federal Aviation Administration, Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, CO

Jackson Hole Airport, 1250 East Airport Road, Jackson, WY

Teton County Library, 125 Virginian Lane, Jackson, WY.

Issued in Renton, Washington on February 8, 1999.

Lowell H. Johnson,

Manager, Airports Division, Federal Aviation Administration, Northwest Mountain Region, Renton, Washington.

[FR Doc. 99–4173 Filed 2–18–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee.

DATES: The meeting will be held March 18–19, 1999, beginning at 10 a.m. on March 18. Arrange for oral presentations by March 8.

ADDRESSES: The meeting will be at the FAA Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW., Executive Conference Room, 5th Floor, Renton, WA.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a meeting of the Aging Transport Systems Rulemaking Advisory Committee at the FAA Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW., Renton, WA, Executive Conference Room, 5th Floor, beginning at 10 a.m. on March 18. The agenda will include.

- Discussion of tasks 3 through 5 to determine the objective of instructions to subcommittees assigned to tasks. The tasks include: (3) Improvement of Maintenance Criteria; (4) Review and Update Standard Practices for Wiring Committee; and (5) Review Air Carrier and Repair Station Inspection and Repair Training Programs & Recommend Actions to Address Aging Systems.
- Discussion of the Maintenance Steering Group (MSG)–3 process that is used to define airline maintenance programs for transport airplanes.
- Discussion of schedules for advisory committee tasks.
- Open agenda items.
- Future meeting schedule.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by March 8, 1999, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 20 copies to the Executive Director, or by bringing the copies to him at the meeting. Public statements will only be considered if time permits.

In addition, sign and oral interpretation as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on February 12, 1999.

Ida M. Klepper,

Acting Director, Office of Rulemaking.

[FR Doc. 99–4174 Filed 2–18–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Actions on Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of actions on exemption applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the actions on exemption applications in SEPTEMBER—DECEMBER 1998. The modes of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain exemptions were issued.

Issued in Washington, DC, on February 11, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
MODIFICATION EXEMPTIONS				
1862–M	DOT–E 1862	Greer Hydraulics, Inc., Rockford, IL.	49 CFR 173.302(a)(1), 175.3	To modify the exemption to provide for several design changes.
6610–M	DOT–E 6610	ARCO Chemical Company, Newtown Square, PA.	49 CFR 173.225(e)	To modify the exemption to provide for water and rail as additional modes of transportation for shipment of Division 5.2 Type F, liquid.
7657–M	DOT–E 7657	Welker Engineering Company, Sugar Land, TX.	49 CFR 173.119, 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	To modify the exemption to provide for Class 2.3 as an additional class of material for the transportation of certain compressed gases in non-DOT specification cylinders.
8556–M	DOT–E 8556	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h), 177.840, 178.338.	To modify the exemption to provide for an additional design portable tank for use in transporting liquefied hydrogen.
8650–M	DOT–E 8650	Ethyl Corporation, Richmond, VA.	49 CFR 173.354, 174.63(b)	To modify the exemption to provide for Class 3 as an additional class of material for transportation in a non-DOT specification steel portable tank.
10365–M	DOT–E 10365	U.S. Enrichment Corporation, Bethesda, MD.	49 CFR 178.121–1(b)	To modify the exemption to provide for 21PF–1A and 21PF–1B packages with gross weights greater than indicated in the specification and relief from marking requirement.
10429–M	DOT–E 10429	Baker Performance Chemicals, Inc., Houston, TX.	49 CFR 177.834(h), Part 107 appendix B(1), Part 173 Subpart D and F.	To modify the exemption to increase the capacity allowance to 793 gallons for IBC's mounted on vehicles for use in transporting Class 3 and Class 8 liquids.
10429–M	DOT–E 10429	HCI USA Distribution Companies, Inc., Santa Ana, CA.	49 CFR 177.834(h), Part 107 appendix B(1), Part 173 Subpart D and F.	To modify exemption to allow UN31A IBCs having capacities not exceeding 660 gallons for the discharge of certain Class 3 and Class 8 liquids from DOT Specification 57 stainless steel portable tanks without removing tanks from vehicle on which it is transported; the addition of certain Class 9 materials.
10672–M	DOT–E 10672	Burlington Packaging, Inc., Brooklyn, NY.	49 CFR 173.3(a), 174.25(a), 175.3, 177.848(b), Part 172 Subpart E and F, Part 173, Subpart D, E, F, and H.	To modify exemption to provide for alternative absorbent material and plastic ringlock on specially-designed composite type packaging.
10672–M	DOT–E 10672	Burlington Packaging, Inc., Brooklyn, NY.	49 CFR 173.3(a), 714.25(a), 175.3, 177.848(b), Part 172, Subpart E and F, Part 173, Subpart D, E, F, and H.	To modify the exemption to provide for passenger air as an additional mode of transportation for shipping liquid and solid hazardous materials required to bear the POISON, KEEP AWAY FROM FOOD, FLAMMABLE LIQUID, FLAMMABLE SOLID OR CORROSIVE labels in specially-designed composite type packaging.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10966–M	DOT–E 10966	Columbia Helicopters, Inc., Portland, OR.	49 CFR 173.119, 173.263, 175.320.	To modify the exemption to provide for an additional non-DOT specification container for the transportation by helicopter of a Class 3 material, a combustible liquid, and a Class 8 material in non-DOT specification rotationally molded, cross-linked polyethylene portable tanks.
11167–M	DOT–E 11167	ECO–Pak Specialty Packaging, Elizabethon, TN.	49 CFR 173.240–244	To modify the exemption to provide for a similar type portable tank suitable for transporting solids and liquids specified as Packaging Group 1 materials, as well as materials poisonous by inhalation.
11352–M	DOT–E 11352	PepsiCo, Inc., Arlington, TX.	49 CFR 172.200, 172.300, 172.400, 172.500.	To authorize party-status and additional classes of hazardous materials.
11516–M	DOT–E 11615	Falcon Safety Products, Inc., Somerville, NJ.	49 CFR 173.306(a)(3)	To modify the exemption to provide for certain DOT Specification 2Q containers in size greater than presently authorized.
11537–M	DOT–E 11537	Industrial Chemtex, Inc., Longview, TX.	49 CFR 177.834(h)	To modify the exemption to include UN31HA1 intermediate bulk containers for the transportation in commerce of certain Class 8 material in IBCs that are securely mounted to a flatbed trailer, but not removed from the vehicle prior to loading or unloading of container.
11725–M	DOT–E 11725	Dynatherm Corporation, Hunt Valley, MD.	49 CFR 173.301, 173.302(a), 173.304(a)(2), 173.34(d), 173.40, 175.3.	To authorize party status and to authorize a similar non-DOT specification heat pipe assembly for shipment of certain liquefied and compressed gases.
11984–M	DOT–E 11984	Trans World Airlines, Inc., Kansas City, MO.	49 CFR 172.102(c)(1) special provision 60.	To modify the exemption to provide for rail as an additional mode of transportation for the movement of motor-vehicle (piggy-back trailers) when shipping oxygen generators.
12062–M	DOT–E 12062	Vulcan Chemicals, Birmingham, AL.	49 CFR 173.242	To reissue the exemption originally issued on an emergency basis to continue to use a non-DOT specification tank to transport a 6.1 material.
12062–M	DOT–E 12062	Wood Protection Products, Inc., Charlotte, NC.	49 CFR 173.242	To authorize party status and to authorize a similarly designed non-DOT specification, pneumatic hopper trailer for the transportation of a 6.1 material.
12094–M	DOT–E 12094	Suburban Propane, Inc., Anchorage, AK.	49 CFR 1234	To reissue the exemption originally issued on an emergency basis to authorize the transportation of propane, Division 2.1, in DOT 51M portable tanks, that exceed the quantity limitations.
12095–M	DOT–E 12095	Railway Progress Institute, Inc., Alexandria, VA.	49 CFR 172.301(c), 180.503, 180.509, 180.517.	To reissue an exemption originally issued on an emergency basis (as an extension) to authorize an alternative inspection and test program for tank cars.
12107–M	DOT–E 12107	Toyota Motor Sales, U.S.A., Inc., Torrance, CA.	49 CFR 100–180, except as provided in exemption.	To reissue the exemption originally issued on an emergency basis for the manufacture, mark and sale of certain shock absorbers, struts, stays and dampers for transportation in commerce as accumulators.
12112–M	DOT–E 12112	HRD Aero Systems, Inc., Valenica, CA.	49 CFR 173.301(1)	To reissue the exemption originally issued on an emergency basis for the transportation in commerce of certain 2.2 gases in non-DOT specification copper cylinders used as components (fire extinguishers) in aircraft of foreign manufacturers.
12113–M	DOT–E 12113	Bemis Company, Inc., Omaha, NE.	49 CFR 178.3(a)(4)	To reissue the exemption originally issued on an emergency basis for the transportation in commerce of bags (UN5M2) which were not marked to correct size specifications.
			NEW EXEMPTIONS	
11098–N	DOT–E 11098	Alcan Smelters and Chemicals Ltd., Montreal, CN.	49 CFR 49 CFR 173.242	To authorize the transport of (aluminum dross) substances which in contact with water emit flammable gases, solid, n.o.s. UN 2813 classed as Division 4.3 in ventedrail box car. (mode 2)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11540–N	DOT–E 11540	Convenience Products, Fenton, MO.	49 CFR 173.1200(a)(8)(ii)	To authorize an alternative test of aerosol containers with polyurethane prepolymer components to attain internal pressure of at least 130 degrees. (modes 1, 2, 3, 4, 5)
11682–N	DOT–E 11682	Cryolor, Argancy 57365 Ennery—France.	49 CFR 178.338–2(a)&(e)	To authorize the transportation in commerce of a vacuum insulated, non-DOT specification portable tank permanently fitted within an ISO frame for the use in transporting certan refrigerated liquid, Division 2.2. (modes 1, 2, 3)
11774–N	DOT–E 11774	Safety Disposal System, Inc., Opa Locka, FL.	49 CFR 171.8, 172.101 Col 8c, 173.197.	To authorize the transportation in commerce of a specially designed outer packaging equipped with liner for use in transporting regulated medical waste, Division 6.2. (mode 1)
11783–N	DOT–E 11783	Peoples Natural Gas, Rosemount, MN.	49 CFR 173.242	To authorize the one-time transportation of natural gas odorant in portable tanks comparable to DOT Specification 51. (mode 1)
11943–N	DOT–E 11943	ICI Americas, Inc., Wilmington, DE.	49 CFR 174.680, 175.630, 176.600, 177.841.	To authorize the transportation of co-loading of materials meeting Packing Group III toxic (poison) class, bearing ''harmful—keep away from food'' labels. (modes 1, 2, 3, 4)
11982–N	DOT–E 11982	Webasto Thermosystems, Inc., Madison Heights, MI.	49 CFR 177.834(1)(2)(i)	To authorize the manufacture, mark and sale of cargo heaters for use in transporting Class 3 or Division 2.1 hazardous materials in enclosed trucks or trailers on highway vehicles. (mode 1)
12004–N	DOT–E 12004	Alfa SA, Portugal	49 CFR 173.304, 173.34(e)(9), 175.3, 178.51.	To authorize the manufacture, mark and sale of non-specification cylinders comparable to DOT-Specification 4BA for use in transporting certain Class 2 material. (mode 1, 2, 4)
12022–N	DOT–E 12022	Taylor-Wharton Co., Harrisburg, PA.	49 CFR (e)(15)(vi), 173.302(c)(2), (3), (4) & (5), 173.34(e)(1), (e)(3), (e)(4), (e)(8), (e)(14), 173.34(e)(1), (e)(3), (e)(4), (e)(8), (e)(14), (e).	To authorize the use of ultrasonic inspection in lieu of hydrostatic pressure test and internal visual inspection of 3AA cylinders for use in transporting hazardous materials classed as Division 2.1., 2.2 and 2.3. (mode 1, 2, 3, 4, 5)
12054–N	DOT–E 12054	Gulf & Caribbean Cargo, Inc., Fort Lauderdale, FL.	49 CFR 172.101, Col. 9B	To authorize the transportation in commerce of explosives, Division 1, that are forbidden or exceed the quantity limitation for transportation by air. (mode 4)
12067–N	DOT–E 12067	United Parcel Service Company (UPSCO), Louisville, KY.	49 CFR 171.2(a), 173.3(a), 173.301(e), 173.302(a), 173.34(a)(1) & (e).	To authorize the transportation in commerce of compressed gases, n.o.s, Division 2.2 in non-DOT specification cylinders used as part of an aircraft component (mode 1)
12084–N	DOT–E 12084	AlliedSignal, Inc., Morristown, NJ.	49 CFR 173.34(e)(11)	To authorize an alternative schedule for retesting of DOT 4B, 4BA, and 4BW cylinders used in transporting refrigerant gases and blends. (modes 1, 2, 3)
12087–N	DOT–E 12087	LND, Inc., Fairfield, CT	49 CFR 172.101, Co. 9, 173.306, 175.3.	To authorize the manufacture, mark, and sale of non-DOT specification metal containers containing Boron Trifluoride, classed as 2.3 for use in radiation detectors. (modes 1, 2, 3, 4, 5)
12114–N	DOT–E 12114	GPU Nuclear, Inc., Middletown, PA.	49 CFR 173.403, 173.427	The authorize transportation in commerce of a nuclear steam generator and pressurizer. (mode 2)
12115–N	DOT–E 12115	GPU Nuclear, Inc., Middletown, PA.	49 CFR 173.403, 173.427	To authorize the transportation in commerce of a nuclear reactor vessel. (mode 2)
12118–N	DOT–E 12118	Taylor-Wharton Theodore, AL.	49 CFR 177.834(i)(2), 178.316(c)(1) & (2).	To authorize the manufacture, marking, sale and use of DOT Specification 4L welded insulated cylinders and assemblies mounted to handling skid for use in transporting Division 2.2 material. (mode 1)
12122–N	DOT–E 12122	Atlantic Research Corp., Knoxville, TN.	49 CFR 173.301(h), 173.302, 173.306(d)(3).	To authorize the manufacture, mark, sale and use of non-Dot specification cylinders for use as components of automotive vehicle safety systems. (modes 1, 2, 3, 4, 5)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12124–N	DOT–E 12124	Albemarle Corp., Baton Rouge, LA.	49 CFR 173.242, 178.245–1(c), 178.245–1(d)(4).	To authorize the transportation in commerce of a non-DOT specification portable tank comparable to a specification DOT 51 portable tank equipped with bottom outlet and no internal shutoff valve for use in transporting various hazardous materials classed in Division 4.2 and 4.3. (modes 1, 3)
12128–N	DOT–E 12128	Ogden Waste Solutions, Inc., Okahumpka, FL.	49 CFR 171.8, 172.101 Column (8C), 173.197.	To authorize the transportation in commerce of non-DOT specification steel roll-off containers as outer packagings for transportation in commerce of regulated medical waste in dual packagings. (mode 1)
12133–N	DOT–E 12133	Polar Air Cargo, Washington, DC.	49 CFR 172.101(9B), 172.204 (a) & (c), 173.27, 173.54(j), 175.30(a)(1).	To authorize the transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized. (mode 4)
12135–N	DOT–E 12135	Daicel Safety Systems, Inc., Hyogo-Ken, JP.	49 CFR 173.301(h), 173.302, 173.306(d)(3).	To authorize the manufacture, mark and sale of non-DOT specification cylinders (pressure vessels) for use as components of automobile vehicle safety systems. (modes 1, 2, 3, 4)
12147–N	DOT–E 12147	Portland General Electric, Rainier, OR.	49 CFR 173.416(a), 173.467	To authorize the one-time transportation in commerce of a reactor vessel for disposal containing Class 7, radioactive material. (modes 1, 3)
12168–N	DOT–E 12168	Chemical Leaman Tank Lines, Inc., Exton, PA.	49 CFR 171.101 (T27)	To authorize the emergency one-time transportation in commerce of a IM101 tank not in compliance with special provision T27 minimum shell thickness used for the transportation in commerce of Class 8 material. (mode 1)
12176–N	DOT–E 12176	Hoke Inc., Cresskill, NY.	49 CFR 123, 178.42	To authorize the manufacture, marking and sale of non-DOT specification cylinders conforming to DOT 3E specification for use in transporting hazardous materials which are presently authorized in 3E. (modes 1, 2, 3)
		EMERGENCY EXEMPTIONS		
EE 12018–N	DOT–E 12018	MVE, Inc., New Prague, MN.	49 CFR 173.320	Request for emergency exemption to authorize the bulk transportation of refrigerated liquids in cargo tanks when the tanks are not mounted on motor vehicles. (modes 1, 3)
EE 12095–N	DOT–E 12095	Railway Progress Institute, Alexandria, VA.	49 CFR 172.301(c), 180.503, 180.509, 180.517.	Request for emergency exemption that authorizes an alternative inspection and test program for any class DOT tank car, and any non-DOT tank car when such car is used to transport hazardous material. (mode 2)
EE 12140–N	DOT–E 12140	Airgas, Inc. and Airgas Management, Inc., Radnor, PA.	49 CFR 173.3, 173.304	Request for emergency exemption to transport cylinders that are not marked with the correct contents. (mode 1)
EE 12141–N	DOT–E 12141	Birmingham Southeast LLC, Cartersville, GA.	49 CFR 173.24(d)(2)	Request for emergency exemption that authorize the one-time transportation of a hopper car containing hazardous waste that exceeds the maximum weight of lading marked on the spec. plate. (mode 2)
EE 12143–N	DOT–E 12143	Suburban Propane, Anchorage, AL.	49 CFR 172.101, 176.83(b)	Request for emergency exemption to authorize the transportation of propane that exceed the quantity limitations per package, when offered for transportation by air. (mode 5)
EE 12150–N	DOT–E 12150	Midland Manufacturing Corp, Skokie, IL.	49 CFR 179.102–17	Request for emergency exemption to authorize the transportation in commerce of DOT spec tank cars meeting all specs except that they are equipped with combination pressure relief devices that contain a frangible disk constructed of a non-authorized material. (mode 2)
EE 12151–N	DOT–E 12151	Energetic Solutions, Dallas, TX.	49 CFR 173.24b(d)(2)	Request for an emergency exemption to authorize the movement of a hopper type rail car overloaded with ammonium nitrate. (mode 2)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 12153–N	DOT–E 12153	Sandia National Labs, Albuquerque, NM.	49 CFR not provided	Request for emergency exemption to transport certain material in non-DOT spec containers. (mode 1)
EE 12154–N	DOT–E 12154	Hach company, Ames, IA.	49 CFR 171.11(d)(4)(ii)	Request for an emergency exemption to authorize shipments of hazmat by ICAO not to include notation on the shipping paper indicating that the shipment is being made under 49 CFR 171.11 or include the letters ''ICAO''. (modes 4, 5)
EE 12159–N	DOT–E 12159	United Parcel Service, Louisville, KY.	49 CFR 171.2(a), 172.200, 172.203, 173.220, 175.30, 175.33, 175.78, 175.79, 175.85.	Request for an emergency exemption to transport in commerce generators powered by internal combustion engines as ''engines, internal combustion'' on cargo-only aircraft. (mode 4)
EE 12160–N	DOT–E 12160	BAX Global Inc., Irvine, CA.	49 CFR 171.11(d)(4)(ii)	Request for an emergency exemption to authorize shipments of certain materials by air, without indicating on the shipping paper that the shipment is being made under the provisions of 49 CFR 171.11 or including the letters ''ICAO'', as currently required. (modes 1, 2, 4, 5)
EE 12161–N	DOT–E 12161	Clariant, Charlotte, NC	49 CFR 173.24(b)(2)	Request for an emergency exemption to transport bottles that have been scored (and therefore may leak) to one consolidation site. (mode 1)
EE 12162–N	DOT–E 12162	Dept of the Army (DOD), Falls Church, VA.	49 CFR 178.35, 178.36(e)(j)	Request for an emergency exemption to authorize the use of non-DOT specification containers for certain compressed gases. (modes 1, 2, 3, 4, 5)
EE 12163–N	DOT–E 12163	Safety-Kleen, Columbia, SC.	49 CFR 173.211	Request for an emergency exemption to transport non-DOT specification cylinders containing sodium and mineral spirits. (mode 1)
EE 12169–N	DOT–E 12169	Dupont Victoria, TX	49 CFR 173.24b(d)(2)	Request for an emergency exemption to transport a rail car that is overloaded with class 9 material. (mode 2)
EE 12188–N	DOT–E 12188	BFI Waste Systems of North America, Baltimore, MD.	49 CFR 172.101	Request for an emergency exemption to transport reg. med waste in a bulk container. (mode 1)
EE 12193–N	DOT–E 12193	Clariant, Charlotte, NC	49 CFR 173.24(b)(2)	Request for an emergency exemption to transport damaged DOT 56 portable tanks containing sodium hydrosulfite. (mode 1).

DENIALS

8914–X	Request by Amerijet International, Inc. Ft. Lauderdale, FL to authorize the shipment of certain Division 1 explosives which are forbidden or exceed quantity limitations authorized for transportation by cargo aircraft only denied November 6, 1998.
10138–M	Request by Betz Dearborn, Inc. Trevose, PA to modify the exemption to provide for the use of intermediate bulk containers for transporting different classes of hazardous materials denied December 18, 1998.
11540–N	Request by Convenience Products Fenton, MO to authorize an alternative test of aerosol containers with polyurethane prepolymer components to attain internal pressure of at least 130 degrees denied October 6, 1998.
12043–N	Request by United States Enrichment Corporation (USEC) Bethesda, MD to authorize an emergency exemption to permit the shipment of uranium hexafluoride cylinders with valves that are manufactured to the 1990 edition of ANSI N14.1 instead of the 1995 edition denied September 30, 1998.
12044–N	Request by Reagent Chemical & Research, Inc. Houston, TX to authorize the transportation in commerce of DOT 111A100W5 tank cars that exceed the authorized load capacity for use in transporting hydrochloric acid, Class 8 denied October 9, 1998.

[FR Doc. 99–3944 Filed 2–18–99; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Application for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modifications of Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received

the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before March 8, 1999.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Docket No.	Applicant	Modification of exemption
6611–M	.....	Gardner Cryogenics, Lehigh Valley, PA (See Footnote 1)	6611
6765–M	.....	Gardner Cryogenics, Lehigh Valley, PA (See Footnote 2)	6765
11447–M	.....	SAES Pure Gas, Inc., San Luis Obispo, CA (See Footnote 3)	11447
11856–M	RSPA–1997–2530	Olin Corp/Motorola Corp, (See Footnote 4)	11856
12211–M	Non-available	BJ Coiltech division of BJ Services Company USA, Lafayette, LA (See Footnote 5)	12211

(1) To modify the exemption to provide for design changes of a non-DOT specification vacuum insulated portable tank manufactured in accordance with ASME Code criteria resulting in an increase of the Maximum Allowable Working Pressure for the transportation of a nonflammable cryogenic liquid.

(2) To modify the exemption to provide for design changes of the non-DOT specification portable tanks manufactured in accordance with the ASME Code criteria resulting in an increase of the Maximum Allowable Working Pressures for the transportation of a Division 2.1 and a Division 2.2 material.

(3) To modify the exemption to allow for a design change of the stainless steel pressure vessel; an increase of catalyst material not to exceed 8,000 pounds; increase of nickel content within the catalyst not to exceed 5,200 pounds.

(4) To modify the exemption to increase the satellite fuel tank capacity from 33 gallons to 35 gallons and to authorize rail freight as an additional mode of transportation for certain Division 2.3 and Class 8 materials.

(5) To reissue the exemption originally issued on an emergency basis to authorize the transportation in commerce of liquid nitrogen, cryogenic liquid by cargo vessel in non-DOT specification insulated portable tanks manufactured before 2/1/99, used in support of the offshore oil and gas exploration and production in the Gulf of Mexico.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 12, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 99–4103 Filed 2–18–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5 —Passenger-carrying aircraft.

DATES: Comments must be received on or before March 22, 1999.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW. Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (40 U.S.C. 1806: 49 CFR 1.53(e)).

Issued in Washington, DC, on February 12, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12205–N	RSPA–1999–5044	Independent Chemical Corp., Glendale, NY.	49 CFR 177.848	To authorize the transportation in commerce of Division 4.2 and Class 8 material inside poly bags within plastic lined UN 1G/Y fiber drums to be transported exempt from segregation criteria. (mode 1)
12206–N	Non-available	General Electric Silicones, Waterford, NY.	49 CFR 177.834(i)(3)	To authorize cargo tanks to remain connected to outlets without attendance of a qualified person during unloading of Class 3 and Class 8 hazardous materials. (mode 1)
12205–N	RSPA–1999–5044	Independent Chemical Corp., Glendale, NY.	49 CFR 177.848	To authorize the transportation in commerce of Division 4.2 and Class 8 material inside poly bags within plastic lined UN 1G/Y fiber drums to be transported exempt from segregation criteria. (mode 1)
12206–N	Non-available	General Electric Silicones, Waterford, NY.	49 CFR 177.834(i)(3)	To authorize cargo tanks to remain connected to outlets without attendance of a qualified person during unloading of Class 3 and Class 8 hazardous materials. (mode 1)
12207–N	Non-available	EM Science, Cincinnati, OH.	49 CFR 171.1(a)(1), 1720.200(a), 172.302(c).	To authorize the transportation in commerce of various classes of hazardous materials in combination, composite and single packagings not to exceed 250 gallon capacity to be transported across public highway as essentially unregulated (mode 1)
12208–N	RSPA–1999–5060	Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.34(e)(11) ...	To authorize the transportation in commerce of Ethyl chloride, Division 2.1, in DOT 4BW specification cylinders. (modes 1, 3, 4)
12210–N	RSPA–1999–5059	Illinois Fertilizer & Chemical Association, St. Anne, Il.	49 CFR 172.200, 172.201, 172.202, 172.203, 172.204.	To authorize the transportation in commerce of agricultural products in DOT specification packaging without required shipping papers under certain circumstances. (mode 1)
12213–N	RSPA–1999–5072	Washington State Ferries, Seattle, WA.	49 CFR 176.93	To authorize the transportation of DOT specification cylinders filled with propane on transport vehicles other than those presently authorized. (mode 3)

Note: Federal Register/Vol. 64, No. 13, Thursday, January 21, 1999 ''List of appl exemptions'' summary for Application No. 12203–N should be changed to ''To author of automated surveillance and signaling equipment for loading and unloading MC–330 and MC–331 cargo tanks instead of personal attendance during the loading.

[FR Doc. 99–4104 Filed 2–18–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Capital Reinsurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 6 to the Treasury Department Circular 570; 1998 Revision, published July 1, 1998, at 63 FR 36080.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6905.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable reinsuring company on Federal bonds is terminated effective January 22, 1999.

The Company was last listed as an acceptable reinsuring company on Federal bonds at 63 FR 36114, July 1, 1998.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00516–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: February 10, 1999.

Wanda J. Rogers,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–4183 Filed 2–18–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Liberty Insurance Corporation

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 7 to the Treasury Department Circular 570; 1998 Revision, published July 1, 1998, at 63 FR 36080.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1998 Revision, on page 36098 to reflect this addition: *Company Name:* Liberty Insurance Corporation. *Business Address:* 175 Berkeley Street, Boston, Massachusetts, 02117. *Phone:* (617) 357–9500. *Underwriting Limitation* b/: $20,002,000. *Surety Licenses c/:* AL, IL, IA, MN, MS, NJ, NM, NY, RI, VT. *Incorporated in:* Vermont.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00516–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: February 10, 1999.

Wanda J. Rogers,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–4184 Filed 2–18–99; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Object Imported for Exhibition Determinations: ''Defining Russian Graphic Arts: From Diaghilev to Stalin, 1898–1934''

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 F.R. 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit ''Defining Russian Graphic Arts: From Diaghilev to Stalin, 1898–1934'', imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Jane Voorhees Nimmerli Art Museum, Rutgers, The State University of New Jersey, New Brunswich, New Jersey, from on or about March 27, 1999, until on or about June 30, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit items, or for other information, contact Jacqueline Caldwell, Assistant General Counsel, Office of the General Counsel at 202/619–6982. The address is Room 700, U.S. Information Agency, 301 4th Street, S.W. Washington, D.C. 20547–0001.

Dated: February 12, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–4194 Filed 2–18–99; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 64, No. 33

Friday, February 19, 1999

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 ENERGY

Federal Energy Regulatory Commission

Notice of Intent to Eliminate the Bulletin Board System

Correction

In notice document 99–3217, beginning on page 6642, in the issue of Wednesday, February 10, 1999, make the following correction:

On page 6642, in the third column, under **COMMENT PROCEDURES**, in the first paragraph, in the sixth line, the date should read ''March 12, 1999''.

[FR Doc. C9–3217 Filed 2–18–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-7]

Proposed Modification of Class E Airspace; Flint, MI

Correction

In proposed rule document 99–3287 beginning on page 6581, in the issue of Wednesday, February 10, 1999, make the following correction:

On page 6581, in the second column, the docket number is corrected to read as set forth above.

[FR Doc. C9–3287 Filed 2-18-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-5]

Proposed Modification of Class E Airspace; Hallock, MN

Correction

In proposed rule document 99–3360 beginning on page 7142, in the issue of Friday, February 12 , 1999, make the following correction(s):

§ 71.1 [Corrected]

1. On page 7143, in the first column, in § 71.1, the heading ''**AGL MN E5 Hallock NM [Revised]**'' should read ''**AGL MN E5 Hallcok MN [Revised]**''.

2. On page 7143, in the first column, in § 71.1, under the heading **AGL MN E5 Hallock MN [Revised]**, in the eighth line, after ''radius'', ''of'' should read ''to''.

[FR Doc. C9–3360 Filed 2–18–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-75]

Proposed Modification of Class E Airspace; Fremont, OH

Correction

In proposed rule document 99–3517, beginning on page 7143, in the issue of Friday, February 12, 1999, make the following correction:

§ 71.1 [Corrected]

On page 7144, in the first column, in § 71.1, the heading''**AGL OH E5 Freement, OH [Revised]**'' should read ''**AGL OH E5 Fremont, OH [Revised]**''.

[FR Doc. C9–3517 Filed 2–18–99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday
February 19, 1999

Part II

Department of Education

Bilingual Education: State Grant Program; Inviting Applications for New Awards for Fiscal Year 1999; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.194Q]

Bilingual Education: State Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this competition. The statutory authorization for this program and the application requirements that apply to this competition are contained in section 7134 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7454)).

Purpose of Program

This program provides grants to State educational agencies to—(1) assist local educational agencies in the State with program design, capacity building, assessment of student performance, and program evaluation; and (2) collect data on the State's limited English proficient (LEP) population and the educational programs and services available to that population. However, a State is exempt from the requirements to collect data if it did not, as of October 20, 1994, have a system in place for collecting the data.

Eligible Applicants: State Educational Agencies.

Deadline for Transmittal of Applications: March 22, 1999.

Deadline for Intergovernmental Review: May 21, 1999.

Available Funds: $2,080,000.

Estimated Number of Awards: 11.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations in 34 CFR Part 299.

Description of Program

Funds under this program are to be used to assist local educational agencies in the State with program design, capacity building, assessment of student performance, and program evaluation. In addition, grantees are required to collect data on the State's LEP population and the educational programs and services available to that population unless a grantee's State did not, as of October 20, 1994, have a system for collecting data in place. However, a State that develops a system for collecting data on the educational programs and services available to all LEP students in the State subsequent to October 20, 1994 must meet this requirement. A grantee may also use funds provided under this program for the training of State educational agency personnel in educational issues affecting limited English proficient children and youth.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria under 34 CFR 75.209 and 75.210 of EDGAR and section 7134 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Providing for the education of children and youth with limited English proficiency.* (20 points) The Secretary reviews each application to determine how effectively the applicant provides, through its own programs and other Federal education programs, for the education of limited English proficient children within its State.

(2) *Need for the project.* (15 points) (i) The Secretary considers the need for the proposed project.

(ii) In determining the need for the proposed project, the Secretary considers the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(3) *Quality of the project design.* (25 points) (i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(B) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(C) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(4) *Quality of project services.* (15 points) (i) The Secretary considers the quality of the services to be provided by the proposed project.

(ii) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(B) The extent to which entities that are to be served by the proposed technical assistance project demonstrate support for the project.

(C) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(5) *Quality of project personnel.* (10 points) (i) The Secretary considers the quality of the personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator.

(B) The qualifications, including relevant training and experience, of key project personnel.

(6) *Adequacy of resources:* (5 points) (i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(A) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(B) The extent to which the budget is adequate to support the proposed project.

(C) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(7) *Quality of the project evaluation.* (10 points) (i) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(ii) In determining the quality of the evaluation, the Secretary considers the following factors:

(A) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(B) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 3, 1998 (63 FR 59452 through 59455).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA# 84.194Q, U.S. Department of Education, Room 6213, 400 Maryland Avenue, SW., Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for transmittal of applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and one copy of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA 84.194Q), Washington, D.C. 20202–4725 or

(2) Hand deliver the original and one copy of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.194Q), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Assistance (Standard Form 424) the CFDA Number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, various assurances and certifications, checklist for applicants, and required documentation:

a. Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

b. Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

c. Instructions for the Application Narrative.

d. Estimated Public Reporting Burden Statement.

e. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

f. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

g. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: This form is intended for the use of grantees and should not be transmitted to the Department.)

h. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions.

i. Notice to All Applicants.

j. Checklist for Applicants.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature.

All applicants must submit *one original* signed application, including ink signatures on all forms and assurances, and *one* copy of the application. Please mark each application as ''original'' or ''copy.'' No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Luis A. Catarineau, U.S. Department of Education, 400 Maryland Avenue, SW., room 5623, Switzer Building, Washington, D.C. 20202–6510. Telephone: (202) 205–9907. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce

in an alternate format the standard forms included in the notice.

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
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7454.

Dated: February 12, 1999.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

Estimated Public Reporting Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1885–0541. Expiration date: December 31, 2001. The time required to complete this information collection is estimated to average 60 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U. S. Department of Education, Washington, D.C. 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U. S. Department of Education, 400 Maryland Avenue, SW., Room 5623, Mary E. Switzer Building, Washington, D. C. 20202–6510.

Instructions for the Application Narrative

Abstract

The narrative section should begin with an abstract that includes a short description of the LEP population in the State, project objectives, and planned project activities.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria.

Table of Contents

The application should include a table of contents listing the sections in the order required.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Assistance Form (SF 424).

2. Budget Information Form (ED Form No. 524)

3. Itemized budget for each year.

4. Assurances—Non-Construction Programs Form (SF 424B)

5. Certifications, Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).

6. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014) (if applicable).

7. Disclosure of Lobbying Activities Form (SF–LLL)

8. Notice to All Applicants (OMB Control No. 1801–0004)—Information that addresses section 427 of the General Education Provisions Act.

9. Table of Contents.

10. Application Narrative, including abstract.

11. One original and one copy of the application for transmittal to the Education Department's Application Control Center.

BILLING CODE 4000–01–P

Application for Federal Education Assistance

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address
Legal Name:_____
Address: _____

Organizational Unit

_____ _____ _____ _____ - _____
City State County ZIP Code + 4

2. Applicant's D-U-N-S Number: |___|___|___|___|___|___|___|___|___|

3. Catalog of Federal Domestic Assistance #: **84.1|9|4|Q|** ==> Title: **Bilingual Education: State Grant Program**

4. Project Director:_____

Address:_____

_____ _____ _____ _____
City State Zip code + 4
Tel. #: ( ) _____-_____ Fax #: ( )_____-_____

E-Mail Address:_____

5. Is the applicant delinquent on any Federal debt? ___Yes ____No
(If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)* |_____|

A - State	H - Independent School District
B - County	I - Public College or University
C - Municipal	J - Private, Non-Profit College or University
D - Township	K - Indian Tribe
E - Interstate	L - Individual
F - Intermunicipal	M - Private, Profit-Making Organization
G - Special District	N - Other *(Specify):*_____

7. Novice Applicant ___Yes ____ No

Application Information

8. Type of Submission:

-PreApplication	*-Application*
____Construction	____Construction
____Non-Construction	____Non-Construction

9. Is application subject to review by Executive Order 12372 process?
____ Yes *(Date made available to the Executive Order 12372 process for review):* ____/____/_____

____ No *(If "No," check appropriate box below.)*
____ Program is not covered by E.O. 12372.
____ Program has not been selected by State for review.

10. Proposed Project Dates: ____/____/_____ ____/____/_____
Start Date: **End Date:**

11. Are any research activities involving human subjects planned at any time during the proposed project period? ____Yes _____No
a. If "Yes," Exemption(s) #: b. Assurance of Compliance #:

_____ ***OR*** _____

c. IRB approval date: ____ Full IRB **or**
_____ ____ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$ _____.00
b. Applicant	$ _____.00
c. State	$ _____.00
d. Local	$ _____.00
e. Other	$ _____.00
f. Program Income	$ _____.00
g. TOTAL	$ _____.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative
_____

b. Title: _____

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address: _____

e. Signature of Authorized Representative

_____ Date:___/____/_____

ED 424 (rev 12.22.98)

BILLING CODE 4000–01–C

Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D–U–N–S Number. Enter the applicant's D–U–N–S Number. If your organization does not have a D–U–N–S Number, you can obtain the number by calling 1–800–333–0505 or by completing a D–U–N–S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com/dbis/aboutdb/intlduns.htm.

3. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested.

4. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. Federal Debt Delinquency. Check ''Yes'' if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check ''No.''

6. Type of Applicant. Enter the appropriate letter in the box provided.

7. Novice Applicant. Check ''Yes'' only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking ''Yes'' the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check ''No.''

8. Type of Submission. Self-explanatory.

9. Executive Order 12372. Check ''Yes'' if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check ''No.''

10. Proposed Project Dates. Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. Human Subjects. Check ''Yes'' *or* ''No''. If research activities involving human subjects are *not* planned *at any time* during the proposed project period, check ''No.'' The remaining parts of item 11 are then not applicable.

If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, *are* planned *at any time* during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check ''Yes.'' If *all* the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in ''Protection of Human Subjects in Research'' attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. Provide this narrative information in an ''Item 11/Protection of Human Subjects Attachment'' and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.

If *some or all* of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in ''Protection of Human Subjects in Research'' attached to this form to prepare the six-point narrative about the nonexempt activities. Provide this six-point narrative in an ''Item 11/Protection of Human Subjects Attachment'' and insert this attachment immediately following the ED 424 face page.

If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter ''Pending'' in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. If the applicant organization does not have on file with GPOS or OPRR an approved Assurance of Compliance that covers the proposed research activity, enter ''None'' in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875–0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202–4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB–3, Room 3633, Washington, D.C. 20202–4725.

Protection of Human Subjects in Research (Attachment to ED 424)

I. Instructions to Applicants About the Narrative Information That Must Be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application ''Yes'' and designated exemptions in 11a, (all research activities are exempt), provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under II.B. ''Exemptions,'' below. The Narrative must be succinct. Provide this information in an ''Item 11/Protection of Human Subjects Attachment'' and insert this attachment immediately following the ED 424 face page.

If you marked ''Yes'' to item 11 on the face page, and designated no exemptions from the regulations (some or all of the research activities are nonexempt), address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an ''Item 11/Protection of Human Subjects

Attachment'' and insert this attachment immediately following the ED 424 face page.

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is It a Research Activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as ''a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.'' If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is It a Human Subject?

The regulations define human subject as ''a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information.'' (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708–8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

BILLING CODE 4000–01–P

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1880--0538

Expiration Date: 10/31/99

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

BILLING CODE 4000-01-C

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and the Office of Management and Budget, Paperwork Reduction Project 1875–0102, Washington, D.C. 20503.

Instructions for ED Form No. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A—Budget Summary: U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1–11.

Lines 1–11, columns (a)–(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1–11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)–(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B—Budget Summary: Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1–11 of Section B.

Lines 1–11, columns (a)–(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1–11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)–(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C—Other Budget Information: Pay Attention to Applicable Program Specific Instructions, if Attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

Assurances—Non-Construction Programs (OMB Approval No. 0348–0040)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

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 this application.

2. Will give the awarding agency, 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 time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) 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 1685–1686), 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. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd–3 and ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) 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.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) 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.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear 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, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1721 et seq.) related to protecting components or potential components of the national wild and scenic river system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1996, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, 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 this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of leadbased paint in construction, or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

_____

Signature of authorized certifying official

Title _____

_____

Applicant organization

Date submitted _____

Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, ''New Restrictions on Lobbying,'' and 34 CFR Part 85, ''Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).'' The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. Lobbying

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid 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 this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. Debarment, Suspension, and Other Responsibility Matters

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies 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 application 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 enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. Drug-Free Workplace (Grantees Other Than Individuals)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610—

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under

subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202–4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such 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;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

Drug-Free Workplace (Grantees Who Are Individuals)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610—

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202–4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

_____

Name of applicant

_____

PR/award number and/or project name

_____

Printed name and title of authorized representative

Signature _____

Date _____

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certificate set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms ''covered transaction,'' ''debarred,'' ''suspended,'' ''ineligible,'' ''lower tier covered transaction,'' ''participant,'' ''person,'' ''primary covered transaction,'' ''principal,'' ''proposal,'' and ''voluntarily excluded,'' as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

_____

Name of applicant

PR/award number and/or project name

_____

Printed name and title of authorized representative

Signature _____

Date _____

BILLING CODE 4000–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $
10. **a. Name and Address of Lobbying Registrant** *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*
11. **Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.**	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)

BILLING CODE 4000–01–C

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks ''Subawardee,'' then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., ''RFP–DE–90–001.''

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

Notice to All Applicants (OMB Control No. 1801–0004 (Exp. 8/31/2001))

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. All applicants for new awards must include information in their applications to address this new provision in order to receive funding under this program.

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What Are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

[FR Doc. 99–4080 Filed 2–18–99; 8:45 am]

BILLING CODE 4000–01–P

Friday
February 19, 1999

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 700, et al.
Indian and Federal Lands; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 740, 746 and 750

RIN 1029–AB83

Indian and Federal Lands

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is proposing to amend its regulations by clarifying the definition of ''Indian lands'' at 30 CFR 700.5 for purposes of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) and the implementing regulations at 30 CFR Chapter VII. The proposed clarification is required pursuant to a settlement agreement between the Department of the Interior and the Navajo Nation and Hopi Indian Tribe to settle the tribes' challenges to a 1989 rulemaking governing coal leases and surface coal mining and reclamation operations on Indian lands. OSM is also proposing various changes to the Federal lands program at 30 CFR Parts 740 and 746, and the Indian lands program at 30 CFR Part 750, in conjunction with the proposed clarification to the definition of Indian lands.

DATES: *Written comments:* We will accept written comments on the proposed rule until 5 p.m., Eastern time, on April 20, 1999.

Public hearings: Upon request, we will hold public hearings on the proposed rule at dates, times and locations to be announced in the **Federal Register** prior to the hearings. We will accept requests for public hearings until 5 p.m., Eastern time, on March 12, 1999. Individuals wishing to attend, but not testify, at any hearing should contact the person identified under **FOR FURTHER INFORMATION CONTACT** before the hearing date to verify that the hearing will be held.

ADDRESSES: If you wish to comment, you may submit your comments on this proposed rule by any one of several methods. You may mail comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW, Washington, D.C. 20240. You may also comment via the Internet to OSM's Administrative Record at: osmrules@osmre.gov.

You may submit a request for a public hearing orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT.** The address, date and time for any public hearing held will be announced prior to the hearings. Any individual who requires special accommodation to attend a public hearing should also contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT:

Ms. Suzanne Hudak, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Washington, DC 20240; Telephone (202) 208–2661. E-mail address: shudak@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Electronic or Written Comments

If you are submitting written comments on the proposed rule please be specific, limit your comments to issues pertinent to the proposed rule, and explain the reason for your recommendations. Except for comments provided electronically, please submit three copies of your comments, if possible, to our Administrative Record Room at the address listed above (see **ADDRESSES**). All comments sent to the Administrative Record Room will be logged into the administrative record for the rulemaking. However, we will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to addresses other than those listed in **ADDRESSES** may not be logged in.

Public Hearing

We will hold a public hearing on the proposed rule upon request only. The time, date, and address for any hearing will be announced in the **Federal Register** at least 7 days prior to the hearing.

Any person interested in participating at a hearing should inform Ms. Hudak (see **FOR FURTHER INFORMATION CONTACT**), either orally or in writing, of the desired hearing location by 5:00 p.m., Eastern time, on March 12, 1999. If no one has contacted Ms. Hudak to express an interest in participating in a hearing at a given location by that date, a hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. The hearing will be transcribed. To assist the transcriber and ensure an accurate record, we request that each person who testifies at a hearing provide the transcriber with a written copy of his or her testimony. To assist us in preparing appropriate questions, we also request, if possible, that each person who plans to testify submit to us at the address previously specified for the submission of written comments (see **ADDRESSES**) an advance copy of his or her testimony.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: RIN 1029–AB83'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at 202–208–2847.

We will make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. However, we will not

consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. General Background on Proposed Rule

The regulations proposed here are primarily intended to implement one of the two rulemaking provisions set forth in the settlement agreement entered into between the Department of the Interior (DOI or the Department) and the Navajo Nation and Hopi Indian Tribe in April 1995. The agreement settled litigation stemming from tribal challenges to final rules published on May 22, 1989 (54 FR 22182) that amended OSM's regulations at 30 CFR Part 750 governing surface coal mining regulatory requirements on Indian lands and the Bureau of Indian Affairs' (BIA) regulations at 25 CFR Part 200 governing leases of coal on Indian lands. The settlement was approved by the U.S. District Court for the District of Columbia in June 1995. *Hopi Indian Tribe* v. *Babbitt*, Nos. 89–2055, 89–2066 (D.D.C. June 20, 1995).

In their legal challenges to the 1989 rulemaking, the plaintiffs complained, among other things, that the designation of OSM in the final rule as the exclusive and sole regulatory authority over surface coal mining operations on Indian lands violated section 710 (Indian lands) of SMCRA. The tribes contended that the Secretary's refusal to delegate surface coal mining regulatory authority to the tribes was contrary to his fiduciary and trust obligations to the tribes.

Additionally, the Navajo Nation claimed that off-reservation trust allotments are Indian lands subject to OSM regulation under SMCRA and that the Secretary may not lawfully allow or delegate to the States any permitting or regulatory authority under SMCRA on such lands.

The tribes also raised objections to BIA's regulations governing coal leases on Indian lands, claiming that the Secretary must incorporate SMCRA standards as terms and conditions in all such existing leases. The Navajo Nation further asserted that the Secretary must incorporate, at the tribe's request, other non-SMCRA terms and conditions into such leases issued after SMCRA's enactment.

The Secretary, in the settlement agreement, maintained his position that he presently lacks statutory authorization to delegate SMCRA regulatory primacy to Indian tribes. He did, however, agree to consider in good faith requests by the tribes to contract specific regulatory functions, provided such requests are in compliance with the Indian Self-Determination Act (25 U.S.C. 450 *et seq.*). The Secretary also agreed that the Navajo Nation and the Hopi Tribe retain the inherent sovereign authority to regulate surface coal mining operations on lands within their jurisdiction, provided such regulation is consistent with and at least as stringent as regulation under SMCRA, and does not interfere or conflict with OSM's Federal program for Indian lands.

Under the terms of the settlement agreement, the Secretary agreed, among other things, to propose a rule clarifying the definition of Indian lands at 30 CFR 700.5 for purposes of SMCRA and the implementing regulations. Specifically, the Secretary agreed to include in the proposed definition ''all allotments held in trust by the Federal government for an individual Indian or Indians, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments, where such allotments are located within a tribal land consolidation area approved by the Secretary or his authorized representative under 25 U.S.C. 2203.'' The settlement further provided that the proposed definition of Indian lands may address other issues arising from section 701 of SMCRA.

The Secretary also agreed to propose rules to amend BIA's regulations at 25 CFR 200.11 to require the inclusion of SMCRA standards as terms and conditions in leases of coal on Indian lands. BIA intends to prepare that rulemaking as a separate proposal that will be published for public comment in a future **Federal Register** notice.

The Secretary further agreed that either or both of the plaintiffs may challenge any rule promulgated pursuant to the settlement that differs substantially from the terms set forth in the agreement. Any party with standing may challenge such a rule under the Administrative Procedure Act (5 U.S.C. 551, *et seq.*), and nothing in this notice or in the settlement agreement predetermines the outcome of this rulemaking.

III. Discussion of Proposed Rule

A. Part 700: General

1. Proposed Clarification of Definition of Indian Lands

The term ''Indian lands'' is currently defined at 30 CFR 700.5 as:

> all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

The regulatory definition at 30 CFR 700.5 mirrors the statutory definition at section 701(9) of SMCRA. OSM is proposing to replace the current definition of Indian lands with a revised version, which would read as follows:

> (a) All lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent or rights-of-way; and
>
> (b) All lands including mineral interests held in trust for or supervised by an Indian tribe. Such lands include, but are not limited to, all allotments held in trust by the Federal government for an individual Indian or Indians, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments, where such allotments are located within a tribal land consolidation area approved by the Secretary or his authorized representative under 25 U.S.C. 2203.

OSM believes that the revised two-part definition would more clearly distinguish between the two general types of lands that qualify as Indian lands under SMCRA, namely all lands within Federal Indian reservation boundaries and all lands held in trust for or supervised by an Indian tribe. Pursuant to the settlement agreement, OSM is further proposing to add clarifying rule language that Indian trust allotments located within a tribal land consolidation area approved by the Secretary fall within the category of lands held in trust for or supervised by an Indian tribe and therefore qualify as Indian lands under SMCRA.

2. Basis and Purpose for Proposed Clarification

There are several possible bases for determining that allotted lands are ''Indian lands'' for purposes of SMCRA. Under the SMCRA definition of ''Indian lands,'' one possible basis would be a determination that a tribe supervises the lands. Another possible basis would be a two-part determination: first, that Congress intended the reference to lands ''supervised by'' an Indian tribe in the SMCRA definition of ''Indian lands'' to include those lands encompassed by the term ''Indian country;'' and second, a determination that allotted lands are Indian country. OSM has taken the position that Congress intended the phrase ''lands . . . supervised by'' an Indian tribe to include lands encompassed by ''Indian country.'' *Valencia Energy Co.*, 109 IBLA 59 (1989). These possible bases are discussed in more detail below.

Tribal Supervision

Counsel for the Navajo Nation has suggested that there are several respects

in which the tribe supervises allotted lands outside the reservation in the tribal land consolidation area. Examples of such tribal supervision may include, but are not necessarily limited to, the exercise of grazing supervision on allotted lands and tribal implementation of certain Federal environmental statutory provisions on allotted lands. The Navajo Nation has been approved for treatment as a state for purposes of implementing the underground injection control program under the Safe Drinking Water Act. That approval extends to all Navajo allotted lands. EPA review is pending on a Navajo Nation application for public water system supervision under the Safe Drinking Water Act.

The Navajo Nation may also assert authority to tax certain activities on Navajo allotted lands. Counsel for the tribe has suggested that Navajo authority to tax may support a conclusion that the tribe supervises the allotted lands. OSM requests comments as to whether, and in what specific respects, the Navajo Nation supervises the Navajo allotments in the tribal land consolidation area.

Indian Country

In the *Valencia* case, which addressed whether certain lands were Indian lands for purposes of SMCRA, OSM referred to the legislative history of the Land Use Policy Planning and Assistance Act of 1973 (LUPA), another Federal bill considered by Congress at the same time the definition of ''Indian lands'' was first included in SMCRA. LUPA contained a similar definition of ''Indian lands''. OSM quoted from the legislative history of LUPA, which stated that Congress intended the phrase ''supervised by an Indian tribe'' to cover

> lands which are Indian country for all practical purposes but which do not enjoy reservation status. The Committee recognizes that Indian tribal land use planning processes and programs would be largely meaningless if the tribes could not control key tracts within their reservations which they did not own or lands outside a reservation which they own or for which they possessed administrative responsibility.

S. Rep. No. 197, 93d Cong., 1st Sess. 127 (1973). OSM concluded in that case that Congress must have intended the same term and almost identical definition in SMCRA to have the same interpretation discussed in the Committee report on LUPA. (Therefore, OSM concluded in *Valencia* that lands owned by an Indian tribe are ''Indian lands'' within the purview of the SMCRA definition at section 701(9)). The IBLA affirmed OSM's analysis. 109 IBLA 60.

In a recent U.S. Supreme Court decision, *Alaska* v. *Venetie,* 118 S.Ct. 948 (1998), the court concluded that, for purposes of both federal civil and criminal jurisdiction, ''Indian country'' means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government . . . , (b) all dependent Indian communities within the borders of the United States . . . , and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.'' 118 S.Ct. 948, 952 (citations omitted). *See* also 18 U.S.C. section 1151; *DeCoteau* v. *District County Court for Tenth Judicial District,* 420 U.S. 425, 427, n. 2(1975).2. Under this standard, Indian allotments would be ''Indian country.'' And if Congress did intend ''Indian country'' to be included in lands ''supervised by an Indian tribe,'' then allotments would also be ''supervised by an Indian tribe,'' and therefore would be included in the SMCRA definition of ''Indian lands.''

OSM notes that there was a challenge by the State of New Mexico to the 1984 regulations establishing the Federal program for Indian lands at 30 CFR Part 750. As one of the steps taken in settlement of that litigation, OSM agreed to issue a clarification of the 1984 regulatory preamble in which the Department disclaimed any assertion that all individual allotments outside of the exterior boundaries of an Indian reservation were ''Indian lands'' within the contemplation of SMCRA. OSM has taken the position that whether or not any specific Indian allotment is within the ''Indian lands'' definition of SMCRA depends on whether the allotment can be deemed to be ''held in trust for or supervised by an Indian tribe.'' See 53 FR 3993 (February 10, 1988); 109 IBLA 68, fn 5.

OSM requests comment as to these and any other specific bases for determining that the allotted lands in the Navajo land consolidation area are ''Indian lands'' for purposes of SMCRA.

3. Navajo Land Consolidation Area

Navajo Land Consolidation Plan

For purposes of this rulemaking, the tribal land consolidation area cited in the settlement agreement and in this proposed rule refers to a large expanse of land that was established by the Navajo Nation by tribal resolution to provide the tribe with the additional authority to consolidate and augment the Navajo land base in accordance with the Indian Land Consolidation Act, 25 U.S.C. 2201 *et seq.* The area is described in the Navajo Land Consolidation Plan that was adopted by the Navajo Nation pursuant to Navajo Tribal Council Resolution No. CMY–23–80 entitled ''*Approving the Navajo Land Consolidation Act of 1988,*'' as amended by Resolution No. CO–43–88 entitled ''*Approving Amendments to the Navajo Land Consolidation Plan.*'' The two resolutions, and accompanying attachments and exhibits, were passed by the Navajo Tribal Council on May 4 and October 25, 1988, respectively. The Navajo Land Consolidation Plan was subsequently approved in January 1989 by the BIA's Navajo Area Office in accordance with delegated authority from the Secretary of the Interior.

As described in the approved consolidation plan, the land acquisition and consolidation area ''includes all lands, including federally administered and public domain lands, within: (1) the boundaries of the Navajo Reservation; (2) Navajo 'Indian country' as defined by 18 U.S.C. § 1151; (3) the aboriginal land area of the Navajo Tribe of Indians, as established by the Indian Claims Commission; (4) the counties of McKinley, San Juan, Sandoval, Cibola, Bernalillo, Socorro, and Valencia in the State of New Mexico; and (5) such other lands designated on the map attached hereto (to the consolidation plan) as Figure 'A'.'' The consolidation plan further states that ''any land consolidation plans previously approved by the Bureau of Indian Affairs for the satellite Reservations of Alamo, Canoncito, and Ramah shall be deemed to be incorporated herein, and may be amended by the Navajo Tribal Council or its duly authorized Committee.''

Navajo Aboriginal Area and Indian Claims Commission Litigation

Figure A, the map referenced in the approved consolidation plan, does not clearly delineate the outer boundary of the Navajo consolidation area and therefore could not be readily used by OSM as a basis for determining the location and extent of coal-bearing allotments located within the approved area. Such a determination was necessary in order for OSM to assess the potential geographic scope of the proposed rule.

In lieu of Figure A, OSM requested from the Navajo Nation a more precise depiction of the consolidation area. In response, the Navajo Nation prepared and provided to OSM a detailed large-scale map dated December 13, 1996, entitled ''Aboriginal Boundary of the Navajo Indian Reservation.'' OSM then requested additional information and clarification from the tribe concerning the history and origin of the aboriginal

boundary depicted on the map because it is this boundary line which largely defines the perimeter of the Navajo consolidation area. The Navajo Nation responded with a letter dated July 14, 1997, providing explanatory information concerning the aboriginal boundary and enclosing a second map dated January 29, 1997.

The January 29 map provided by the Navajo Nation was prepared by the Navajo Land Department and is, for the most part, identical to the earlier December 13 map. It depicts land status and land ownership information in the general vicinity of the Navajo consolidation area, as well as the location of more than eighty Navajo sacred places. As the Navajo Nation explained in its July 14 letter, both ''the Navajo Land Consolidation Act map (Figure A) and the January 29 map are derived from an original map that was created for litigation purposes in Navajo Land Claims litigation in the 1950s.''

The litigation cited in the Navajo Nation's July 14 letter is a reference to the tribe's aboriginal land claim that was filed with the Indian Claims Commission on August 8, 1951. The commission was created on August 13, 1946, by an act of Congress to hear and resolve claims against the United States by any Indian tribe, band, or other identifiable group of American Indians. Although originally established for a ten-year period, the commission was subsequently granted a series of extensions by Congress and continued to exist through September 30, 1978.

It should be noted that the January 29 Navajo Land Department map depicts the aboriginal area recognized by the tribe, as well as a smaller tract of land, designated on the map as the ''Navajo Title Award Area,'' which represents the aboriginal area judicially established by the Indian Claims Commission. In explaining the basis for the larger area established by the tribe, the Navajo Nation's July 14 letter states that ''the aboriginal boundary line appears to connect habitation sites of unknown Indians, which could be Navajo, but are not prototypical Navajo structures, or are unknown but Indian structures, or which are neither Anglo American or Spanish sites, as agreed by the expert witnesses'' of the Navajo Nation, various other tribes, and the Court of Claims. The tribe's letter goes on to describe the smaller judicially established aboriginal area as consisting of ''a combination of known Navajo prototypical habitation sites and sacred places joined together by a line approved for settlement of litigation concerning aboriginal land claims of the Navajo Nation in the Court of Claims in Docket 229.'' Docket 229 is a reference to the docket number assigned to the Navajo's claim before the Indian Claims Commission. The relevance of these two aboriginal areas to the Navajo consolidation area and to this rulemaking is explained below.

The Indian Claims Commission issued its Findings of Fact and Opinion in the Navajo case on June 29, 1970. In ruling on the Navajo claim, the Indian Claims Commission concluded, in pertinent part, ''that as of July 25, 1868, the effective date of the 1868 Navajo Treaty of cession, the plaintiff held aboriginal title to those lands described in Finding 17 herein (in the commission's Findings of Fact), except for those areas contained within any Spanish or Mexican grants or parts thereof falling within the boundaries of the lands so described; that the plaintiff ceded the above described aboriginal title lands to the United States under the 1868 Treaty, except for the area specifically reserved to the plaintiff under Article 2 of said Treaty; and that the plaintiff tribe did not have aboriginal title to the balance of the lands in suit here.'' 23 Ind. Cl. Comm. 275 (1970).

Finding of Fact No. 17 sets forth a detailed metes and bounds description of the area to which the Navajo Nation held aboriginal title on July 25, 1868, as determined by the Indian Claims Commission. This so-called adjudicated or judicially established area corresponds to the ''Navajo Title Award Area'' depicted on the January 29 Navajo Land Department map and is also the third item listed in the Navajo Land Consolidation Plan. The perimeter of the adjudicated area, as shown on that map, connects a series of fifteen points which correspond to the various communities and geographic features cited in the commission's metes and bounds description. As noted earlier, this area is the smaller of the two aboriginal areas illustrated on the January 29 map.

Consolidation Area Lands Affected by the Proposed Rule

The Navajo land consolidation area is situated in northwestern New Mexico, northeastern Arizona, southwestern Colorado and southeastern Utah. The perimeter of the consolidation area consists of the outermost boundary line that is formed by superimposing the larger aboriginal area recognized by the Navajo Nation and the smaller adjudicated area established by the Indian Claims Commission and then expanding that line, as necessary, to fully encompass the seven New Mexico counties that are cited as the fourth item in the Navajo Land Consolidation Plan.

The consolidation area includes both Federal Indian reservation lands and off-reservation lands. The Federal Indian reservation portion of the consolidation area, for purposes of the Navajo Land Consolidation Plan, consists of all lands within the boundaries of the Navajo Indian Reservation and the satellite reservations of Alamo Navajo, Canoncito, and Ramah Navajo. All lands within the boundaries of Federal Indian reservations are Indian lands pursuant to SMCRA section 701(9) and the implementing regulation at 30 CFR 700.5; their jurisdictional status, for purposes of SMCRA regulation, is not at issue. Therefore, this proposed rulemaking relates exclusively to the off-reservation portion of the Navajo consolidation area and, more specifically, to individual Indian trust allotments situated within that portion of the consolidation area.

A map of the consolidation area was prepared by OSM and BIA in the course of developing this proposed rule. It duplicates on a smaller scale the relevant data from the January 29 Navajo Land Department map, including the boundaries of the two aboriginal areas depicted on that map. It also illustrates major highways, cities and towns; the various counties that are cited in the Navajo consolidation plan or are otherwise referenced in this preamble; the location of Federal Indian reservations and pueblos situated partially or completely within the consolidation area; and the general location of the McKinley Mine, an existing surface coal mine whose relevance to this rulemaking will be discussed later in this preamble. Copies of the consolidation area map are available, upon request, by contacting the person specified earlier under **FOR FURTHER INFORMATION CONTACT.**

4. Surface and Mineral Ownership of Individual Indian Trust Allotments Within the Navajo Land Consolidation Area

An individual Indian trust allotment, whether located within or outside the exterior boundaries of a Federal Indian reservation, is allotted to an individual member of an Indian tribe. Each of the trust allotments located within the Navajo land consolidation area was originally allotted to an individual member of the Navajo Nation, but nearly all are now in multiple ownership because of inheritance. The majority of the trust allotments consist of 160-acre parcels of land (one-quarter of a 640-acre section), with some variations in size due to survey corrections resulting from the curvature of the earth or for

reasons such as conformity to geographic features (e.g. rivers) or governmental boundary lines. Additionally, a small number of allotments may be either larger or smaller than 160 acres due to differences in the statutory provisions governing the allotment process, or through partition or sales by the Indian owners.

The surface rights to the Navajo trust allotments located within the consolidation area are held by the Indian owners, while the coal, oil and gas, and other mineral rights were generally reserved for the Federal government at the time of allotment. Under the terms of the settlement agreement approved on January 28, 1997, in *Bertha Mescal* v. *United States of America,* No. CIV 83–1408 LH/WWD (D.N.M.), the Federal government agreed to convey the reserved subsurface minerals underlying Navajo allotments in New Mexico to the plaintiff allottee owners of the surface rights. As defined in the settlement, the plaintiffs included ''all Navajo Indians who hold beneficial title to any interest in allotment land in New Mexico where the allotment trust patent recites that the United States has a reserved mineral interest * * *'' The *Mescal* agreement settled a long-standing class action lawsuit in which the plaintiff Navajo allottees sought a declaration of beneficial title to minerals on or underlying the surface of their respective allotments.

The McKinley Mine, an existing surface coal mine mentioned earlier in this preamble, includes four Federal coal leases within its approved permit area. The *Mescal* agreement contains certain provisions concerning those leases and the overlying Navajo allotments. Specifically, the agreement provides that the Bureau of Land Management (BLM) will issue supplemental trust patents for the 46 McKinley allotments (45 of which are presently included within the McKinley Mine permit area) within six months of the expiration, relinquishment or other termination of the ''Federal Leases'' and that, until such patents are issued, the United States will retain ownership of the reserved minerals. The Bureau of Land Management is the bureau within the Department of the Interior responsible for, among other things, the leasing and supervision of operations involving Federal onshore mineral resources. The term ''Federal Leases'' includes the four McKinley coal leases and certain Federal oil and gas leases.

The *Mescal* settlement further provides that the ''Federal Leases will continue to be administered solely under federal regulations applicable to mineral leases issued under the MLA (Mineral Leasing Act)'' during the term of the leases. The Mineral Leasing Act of 1920, as amended, is the Federal statute that largely governs the leasing and development of certain Federal mineral resources, including coal and onshore oil and gas. The relevance of these *Mescal* settlement provisions to this rulemaking and to SMCRA regulation at the McKinley Mine will be discussed somewhat later in this preamble.

(*Mescal* also provides that BLM will regulate certain potential future Indian mineral leases, collectively referred to in the agreement as the ''Settlement Leases,'' under the regulations applicable to Federal mineral leases issued under the MLA. Those leases would involve both coal, and oil and gas resources. As specified in *Mescal,* any such Settlement Leases for Indian coal could potentially involve up to a total of 28 individual Navajo allotments. The Department has not yet determined the appropriate measures for implementing the *Mescal* provisions concerning Settlement Leases. Therefore, the regulation of any such leases in light of *Mescal* is not addressed in this rulemaking.)

With respect to revenues generated by the McKinley coal leases, the settlement provides that on and after July 1, 1998, and after approved counsel fees are satisfied, 50% of monies received under the terms of the McKinley leases will be distributed to the ''McKinley Fund'' for distribution to the allottees holding beneficial interests in the surface of the allotments. Prior to the *Mescal* agreement, the monies allocated to the McKinley Fund would have been deposited in the U.S. Treasury pursuant to Section 35 of the MLA (30 U.S.C. 191). (The other 50% of the revenues generated by the McKinley coal leases will continue to be distributed to the State of New Mexico pursuant to Section 35 of the MLA.) The McKinley Fund includes all settlement funds derived from the McKinley coal leases and received by the Minerals Management Service (MMS) after July 1, 1998. MMS is the Department of the Interior bureau which, among other things, administers mineral revenues generated from Federal and Indian lands.

5. Coal-Bearing Allotments Within the Off-Reservation Portion of the Navajo Land Consolidation Area

The off-reservation portion of the Navajo land consolidation area extends over parts of New Mexico, Arizona, Colorado and Utah. OSM and BIA have jointly determined that, of those four States, only New Mexico appears to contain coal-bearing Indian trust allotments. OSM and BIA made this determination after a detailed review and analysis of the available information on allotments and coal resources for the off-reservation portion of the consolidation area. This information was obtained from several sources and publications.

A computer-generated listing of some 3,640 Navajo allotments located within the Navajo land consolidation area in New Mexico was provided by BIA's Land Titles and Records Office in Albuquerque, New Mexico. That office maintains the official land records and title documents for Indian lands located under the jurisdiction of BIA's Albuquerque, Navajo and Phoenix Area Offices. The allotment data that was provided included the tract identification number for each allotment, as well as township, range and section information.

OSM obtained coal resource data for part of the off-reservation portion of the consolidation area from a 1971 publication entitled *Strippable Low-Sulfur Coal Resources of the San Juan Basin in New Mexico and Colorado* (New Mexico Bureau of Mines & Mineral Resources, Memoir 25, 1971). The report was prepared by the New Mexico Bureau of Mines & Mineral Resources, with the assistance of the U.S. Bureau of Mines. As stated in the report summary, the study was conducted in order ''to determine the amount, location, quality and economic position of low-sulfur strippable coal in the San Juan Basin.'' The report appears to be the most comprehensive evaluation, to date, of known or potential coal resources within the basin, although the study's authors acknowledge that ''reserve estimates range in reliability from proven tonnages to speculation based on geologic inferences.''

The New Mexico report classified coal reserves into two general categories: those consisting of beds three or more feet thick beneath 10 to 150 feet of overburden, and those in beds five or more feet thick beneath 150 to 250 feet of overburden. Of particular significance to this rulemaking is a map included within the report entitled ''Fields and Areas of Strippable Low Sulfur Coal in San Juan Basin.'' That map depicts the boundaries of the various coal fields and coal areas located within the basin, with each such coal-bearing unit identified by name and relative stratigraphic position.

Coal resource data for the remainder of the off-reservation portion of the consolidation area not covered in the New Mexico study was obtained from a 1996 U.S. Geological Survey (USGS) map entitled ''Coal Fields of the

Conterminous United States'' (U.S. Geological Survey Open-File Report 96–92). Unlike the New Mexico report, which evaluated and selectively identified those areas within the San Juan Basin that could potentially be surface mined, the USGS map depicts all of the locations where coal is known to exist within the conterminous United States without regard to actual mining potential.

Based on an analysis of the allotment and coal resource data described above, OSM and BIA have jointly determined that some 1,895 Navajo allotments located within the Navajo land consolidation area lie partially or completely over surface minable coal. This figure represents 52% of the approximately 3,640 Navajo allotments that lie within the consolidation area. OSM and BIA made this determination using a variety of electronic mapping and Geographic Information System software to create a composite map depicting the location of some 3,500 Navajo allotments relative to the coal fields and coal areas identified in the New Mexico report. The 3,500 allotments that were electronically plotted represent the subset of consolidation area allotments that fell within a certain proximity (0 to 40 miles) to the coal-bearing areas. A comparison of the allotment data with the 1996 USGS map indicated that no allotted lands appear to be located within the vicinity of the additional coal-bearing areas identified on that map. Copies of the map depicting the location and distribution of coal-bearing Navajo allotments located within the Navajo consolidation area are available, upon request, from the person specified earlier under **FOR FURTHER INFORMATION CONTACT**.

The vast majority of the coal-bearing allotments are located within the borders of McKinley or San Juan Counties in New Mexico. All of the coal-bearing allotments lie within the San Juan Basin which is described in the New Mexico report as ''a major physiographic subdivision of the Colorado Plateau in northwestern New Mexico and southwestern Colorado'' containing three major coal-bearing zones. The report describes the areas of strippable coal as lying ''along the basin margins—mainly the western and southern—in roughly concentric belts of outcrop of coal-bearing strata.''

As noted earlier, 45 individual Indian trust allotments in McKinley County are already either partially or completely included within the McKinley Mine permit area. There are currently no other surface coal mining operations within the Navajo consolidation area that include allotted lands within their existing permit boundaries. However, at least one previous mining proposal submitted to the New Mexico regulatory authority in the 1980's would have included a number of individual Indian allotments in McKinley County within its proposed permit area. A second proposed mine would have been immediately adjacent to such lands on its southern and eastern permit boundaries. The permit applications for those mines were subsequently withdrawn by the applicants. Another proposed mine involved the construction of a railroad corridor, a portion of which traverses a quarter section of allotted land. Although the mining proposal was later withdrawn by the applicant, the railroad corridor was completed in anticipation of eventual mining in the area.

OSM and BIA did not attempt to determine the number of additional allotments, if any, that overlie or intersect areas where the potential for underground coal mining might reasonably exist. At this time, OSM and BIA are unaware of any published data that evaluates the coal resources of either the San Juan Basin or the Navajo consolidation area in terms of underground mining potential. Furthermore, OSM believes that speculation as to the likelihood, timing or extent of any future surface or underground coal mining on allotted lands within the consolidation area is beyond the scope of this rulemaking given the many complex economic, environmental and other variables that ultimately determine the feasibility of such mining proposals.

6. Surface Coal Mining Operations Within the Navajo Land Consolidation Area

Presently, there are eight actively-producing surface coal mining operations (one of which includes a separately permitted coal preparation plant) situated within the Navajo land consolidation area. (The term ''surface coal mining operations'' is defined in SMCRA § 701.28 to include specified aspects of both surface mining and underground mining.) Of those eight active mines, five are in New Mexico, two are in Arizona, and one is located in southwestern Colorado. There are also eight mines which have terminated coal production and are in various stages of reclamation. All of those mines are located in New Mexico. In addition, two SMCRA permits have been issued for a proposed surface coal mining operation that would lie in western New Mexico and would supply coal via railroad to a generating station in eastern Arizona. A State permit covers the mine and the New Mexico portion of the railroad, while an OSM permit has been issued for the Arizona portion of the railroad corridor. The State permit for that mine is currently the subject of a court challenge. In addition, the OSM permit is conditioned upon Federal approval of the mining plan for Federal coal in New Mexico. That mining plan has yet to be approved.

None of the eight mines currently in reclamation, nor the proposed mine, involve allotted lands. Of the eight active mining operations, three mines (and the coal preparation plant associated with one of the mines) lie entirely on Navajo and Hopi reservation lands in Arizona and New Mexico, while three are located exclusively on off-reservation lands (two mines in New Mexico and the mine in Colorado). The two remaining mines, both in New Mexico, include reservation lands and off-reservation lands. Of the five mines located partially or completely on off-reservation lands, only the McKinley Mine in New Mexico contains allotted lands within its approved permit boundaries. Hence, at this time, McKinley is the only mine whose jurisdictional and regulatory status would be affected by this proposed rule. SMCRA regulation at the McKinley Mine, and how it would be affected by this proposed rule, is discussed below.

7. SMCRA Regulation at the McKinley Mine

The McKinley Mine is an 18,692-acre active surface coal mining operation owned and operated by the Pittsburg & Midway Coal Mining Company (P&M). The mine straddles the boundary of the Navajo Indian Reservation near the Arizona-New Mexico border. The portion of the permit area that lies within the boundaries of the Navajo reservation, as well as a parcel of adjacent off-reservation split-estate tribal fee lands, comprises the Indian lands portion of the mine and is collectively referred to as the ''North Area.'' The remainder of the mine, the so-called ''South Area,'' includes off-reservation State, private, Federal and allotted lands, all of which are presently classified as non-Indian lands.

The Indian lands portion of the mine, or North Area, is regulated by OSM under the Federal program for Indian lands at 30 CFR Part 750. The North Area includes 7,019 acres of Navajo Reservation lands and 946 acres of adjacent off-reservation tribal fee lands. As noted earlier, all lands within the exterior boundaries of Federal Indian reservations are Indian lands for purposes of SMCRA regulation. Surface

coal mining operations, or portions thereof, located on such lands are and will continue to be regulated by OSM, in consultation with the affected Indian tribes, the Bureau of Indian Affairs and, as applicable, the Bureau of Land Management, unless legislation is enacted, pursuant to Section 710 of SMCRA, to allow Indian tribes to assume SMCRA regulatory jurisdiction on Indian lands.

The tribal fee lands on which OSM regulates are split-estate lands where the surface rights are owned by the Navajo Nation and the mineral rights are privately owned. Those lands were held to be Indian lands for purposes of SMCRA in two 1994 district court decisions. (*Pittsburg & Midway Coal Mining Co.* v. *Babbitt,* No. CIV 90–730 JC (D.N.M. Sept. 13, 1994); and *New Mexico* v. *Lujan,* No. 89–758–M (D.N.M. Feb. 14, 1994)). Those decisions upheld the Department's interpretation that lands located outside a Federal Indian reservation, the surface estate of which is owned by an Indian tribe and the mineral estate of which is privately owned, are Indian lands within the meaning of section 701(9) of SMCRA and thus are subject to OSM's regulatory jurisdiction. Prior to those rulings, the State of New Mexico also had asserted SMCRA regulatory jurisdiction on the tribal fee lands at the McKinley Mine.

As noted earlier, all of the lands within the McKinley Mine South Area are presently classified as non-Indian lands for purposes of SMCRA and are regulated by the State of New Mexico. New Mexico is a primacy State, meaning that it has in place an approved SMCRA program for the regulation of surface coal mining and reclamation operations located on State and private lands within its borders. New Mexico also has in place a State-Federal cooperative agreement whereby the State regulates coal mining operations located on Federal lands within its borders. The New Mexico Mining and Minerals Division (MMD), located within the State's Energy, Minerals and Natural Resources Department, is the State regulatory authority.

The McKinley Mine South Area is presently 10,727 acres in size and is composed of Federal, private, State, and allotted lands occurring in a complex checkerboard pattern. The surface ownership consists of 4,073 acres of State, Federal and private lands, and 6,654 acres of allotted lands. The allotted lands include all or part of 45 individual Indian trust allotments, 42 of which overlie leased Federal coal and three of which overlie unleased Federal coal. As noted earlier in this preamble, all of the McKinley allotments are included in the *Mescal* settlement and, under the terms of that agreement, the McKinley allottees are to be issued supplemental trust patents within six months of the expiration, relinquishment, or other termination of the existing Federal coal leases. Until that time, the United States will retain ownership of the reserved minerals and the mining of the McKinley coal leases will continue to be subject to the Federal mining plan approval requirements of OSM's regulations at 30 CFR Chapter VII and BLM's regulations at 43 CFR Group 3400.

8. Transfer of SMCRA Regulatory Jurisdiction

This proposed rulemaking to include within the definition of Indian lands all individual Indian trust allotments located within the Navajo land consolidation area would result in the transfer of SMCRA regulatory jurisdiction on such allotments from the State to OSM. The immediate effect of the rule change would be limited to the 6,654 acres of allotted lands included in the McKinley Mine South Area permit that are currently regulated by the New Mexico MMD. As of the effective date of the rule, OSM would assume SMCRA regulatory jurisdiction on those lands. OSM would also be the regulatory authority for any future surface coal mining operations, or portions thereof, located on individual Indian trust allotments lying within the off-reservation portion of the Navajo land consolidation area.

OSM's assumption of regulatory jurisdiction on individual Indian trust allotments located within the Navajo consolidation area would include permitting, and inspection and enforcement (I&E) duties that are now performed by the State. As noted earlier, the McKinley Mine is already subject to joint OSM-State regulation because it includes both Indian lands and non-Indian lands within its approved permit boundaries. This dual regulatory situation makes it essential that OSM and the State closely coordinate their permitting and I&E activities for the McKinley Mine to ensure consistent and non-duplicative regulation. Should OSM assume jurisdiction on the allotted lands currently under State permit in the McKinley Mine South Area, the need for regulatory coordination between OSM and New Mexico MMD would be considerably greater given the checkerboard pattern in which the 45 individual allotments occur within that area.

This proposed rulemaking would also trigger certain changes in the consultation procedures for surface coal mining and reclamation operations whose permit areas include allotted lands within the Navajo consolidation area. Specifically, consultation with individual allottee surface and/or mineral owners would be required in relation to permitting and other regulatory actions under SMCRA involving such allottees' lands. For the McKinley Mine, OSM consults with the Navajo Nation, pursuant to 30 CFR 750.6(a)(4), concerning the protection of non-coal resources of the area affected by the mine. Should allotted lands come to be defined as Indian lands for purposes of SMCRA, as proposed in this rulemaking, consultation would take place with both the affected Navajo allottees and the Navajo Nation for the portion of the mine located on allotted lands. Any potential conflicts that might arise between the allottees and the tribe with respect to the conduct of surface coal mining operations on allotted lands would be dealt with on a case-by-case basis.

OSM's regulations concerning consultation on Indian lands are contained in 30 CFR 750.6. A more detailed discussion of the consultation process, and how it would apply to allotted lands, can be found later in this preamble in conjunction with the discussion of OSM's proposed changes to those regulations.

9. Allocation of Abandoned Mine Land Fees and Title V Funding

The change in jurisdiction on allotted lands that would result from this rulemaking would affect the allocation of abandoned mine land (AML) fees that are collected from coal mining operations on such lands. OSM collects such fees (35 cents per ton for surface coal mines; 15 cents per ton for underground mining; and 10 cents per ton for lignite) pursuant to Title IV of SMCRA and the implementing regulations. The fees are used for eligible abandoned mine land reclamation projects and activities, or for construction of public facilities related to the coal or minerals industry. All of the AML fees are deposited in the U.S. Treasury for subsequent allocation to the so-called Federal share and the State or Tribal share. Fifty-percent of the fees from coal produced from State and private lands within a State, or from coal produced from Indian lands, is allocated to the respective State or Tribal share for use, once appropriated, on eligible reclamation projects and activities. The other 50% is allocated to the Federal share for uses, once appropriated, that include Federal reclamation projects, additional State or

Tribal grants, the Small Operator Assistance Program, AML emergency programs, and Federal administrative expenses.

As of the effective date of the rule change, the non-Federal share of AML fees derived from coal production on allotted lands within the Navajo land consolidation area would be allocated to the Navajo Nation's portion of the AML fund, rather than to New Mexico's portion of the fund. For the McKinley Mine, OSM estimates the total amount of AML fees derived from the four federal coal leases underlying the allotted lands portion of the permit area at $831,250 to $969,070 per year based upon 1997 and 1998 coal production levels. Thus, the 50% non-Federal share that would be redirected from the New Mexico State share to the Navajo Tribal share would range from $415,000 to $484,535 per year based upon current production levels.

The proposed rule could also affect the amount of annual funding that OSM provides to the State of New Mexico to support the implementation of its Title V regulatory program. OSM calculates the Title V grant amount according to a funding formula that includes, among other things, the total acreage that is subject to State regulatory jurisdiction. This proposed rulemaking would reduce the amount of land subject to State regulation, which could potentially result in a decrease the State's annual Title V regulatory funding. Based upon the Federal lands funding option that New Mexico has chosen, OSM anticipates that the reduction in grant funding would be approximately 4.15%.

B. 30 CFR Parts 740 and 746: General Requirements for Surface Coal Mining and Reclamation Operations on Federal Lands; Review and Approval of Mining Plans

OSM's regulations governing surface coal mining and reclamation operations on Federal lands are contained in 30 CFR Subchapter D: Parts 740, 745 and 746. Part 740 sets forth the general requirements for mining and reclamation operations on Federal lands. Part 745 sets forth requirements for the development, approval and administration of State-Federal cooperative agreements under section 523(c) of SMCRA. Part 746 specifies the process and requirements for review and approval, disapproval or conditional approval of mining plans on lands containing leased Federal coal. For purposes of this rulemaking, only Parts 740 and 746 are proposed for revision for the reasons described below.

The regulations at 30 CFR Subchapter D currently apply exclusively to ''Federal lands.'' The term Federal lands is defined, in pertinent part, at Section 700.5 as ''any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. *It does not include Indian lands*'' (emphasis added).

This proposed rulemaking, together with the previously mentioned *Mescal* agreement, would create a situation where the allotted lands included within the McKinley Mine permit area would become Indian lands for purposes of SMCRA regulation, while the underlying coal would continue to be subject to the various requirements applicable to leased Federal coal under the MLA. Those requirements include statutory and regulatory provisions administered by BLM, as well as certain requirements administered by OSM. In OSM's regulations, provisions governing leased Federal coal can be found in the Federal lands program at 30 CFR Parts 740 and 746. Those requirements would continue to apply to the Federal coal leases at the McKinley Mine.

OSM is proposing a series of revisions to the regulations at Parts 740 and 746 that would recognize that responsibilities and requirements pertaining to leased Federal coal would continue to apply to Federal coal leases on Indian lands. Thus, in those instances where leased Federal coal underlies allotted lands, both the Indian lands program at Part 750 and the regulations at Parts 740 and 746 pertaining to leased Federal coal would apply. Specific proposed changes to Parts 740 and 746 are discussed below.

1. Section 740.1: Scope and Purpose

Section 740.1 currently states that Part 740 ''provides for the regulation of surface coal mining and reclamation operations on Federal lands.'' OSM is proposing to add rule language that would also recognize the applicability of Part 740 to the mining of leased Federal coal on Indian lands. This proposed change is meant to preclude any regulatory ambiguity that might arise concerning the continued applicability of the Federal lands program to leased Federal coal on allotted lands should those lands come to be defined as Indian lands.

2. Section 740.4: Responsibilities

The regulations at 30 CFR 740.4(b)(1)–(5) specify OSM's regulatory responsibilities for surface coal mining and reclamation operations on Federal lands. OSM is proposing to amend Section 740.4(b) by adding a new provision at the end of that section concerning the regulation of surface coal mining and reclamation operations on Indian lands containing leased Federal coal. The proposed rule language would provide for OSM regulation on such lands in accordance with the requirements of the Indian lands program at Part 750 and the applicable requirements of the Federal lands program as specified in a new Section 740.11(h) that is also being proposed as part of this rulemaking. (Section 740.11 currently consists of paragraphs (a)–(f). A new paragraph (g) has already been proposed in another rulemaking (62 FR 4836, 4859; January 31, 1997). A new paragraph (h) is being proposed as part of this rulemaking and will be discussed somewhat later in this preamble.)

3. Section 740.5: Definitions

Leased Federal Coal

Section 740.5 currently defines ''leased Federal coal'' as ''coal leased by the United States pursuant to 43 CFR part 3400, *except mineral interests in coal on Indian lands*'' (emphasis added). As noted earlier, the four Federal coal leases underlying allotted lands at the McKinley Mine are to remain in effect pursuant to the *Mescal* settlement until their expiration, relinquishment, or other termination. Under this proposed rulemaking, those allotments would be classified as Indian lands for purposes of SMCRA regulation, thereby creating at least one instance in which leased Federal coal would be located on Indian lands. Therefore, OSM is proposing to amend the definition of leased Federal coal by removing the phrase ''except mineral interests in coal on Indian lands.'' OSM is also proposing to replace the current cross-reference to ''43 CFR part 3400'' in the definition with a reference to ''43 CFR Group 3400'' in order to fully and accurately cite BLM's coal management regulations at 43 CFR Subchapter C. Those regulations consist of nine parts, and various subparts, all of which come under the general heading of ''Group 3400—Coal Management.''

Permit Application Package

The term ''permit application package'' is defined at Section 740.5 as:

> a proposal to conduct surface coal mining and reclamation operations on *Federal lands*, including an application for a permit, permit revision or permit renewal, all the information required by the Act, this subchapter, the applicable *State program*, any applicable cooperative agreement and all other applicable laws and regulations including, with respect to leased Federal coal, the Mineral Leasing Act and its implementing regulations (emphasis added).

For the reasons noted above under the preamble discussion of leased Federal coal, and elsewhere in this preamble, OSM is proposing to amend the definition of permit application package so that it includes mining proposals on Federal lands *and* on Indian lands containing leased Federal coal. OSM is also proposing to replace the reference to the applicable ''State program'' with applicable ''regulatory program.'' The proposed rule language would bring the definition into conformity with the other changes to the Federal and Indian lands programs being proposed in this rulemaking. For clarity, OSM is also proposing a non-substantive change in which the various information requirements specified in the definition are grouped and listed in itemized form.

4. Section 740.11: Applicability

The regulations at 30 CFR 740.11(a)–(f) specify when and to what extent the Federal lands program applies to coal exploration and surface coal mining and reclamation operations on Federal lands in States with approved regulatory programs, with and without cooperative agreements, and in other situations. OSM is proposing to add a new paragraph at the end of Section 740.11 that would pertain specifically to surface coal mining and reclamation operations on Indian lands containing leased Federal coal. The proposed provision would specify the applicable regulatory requirements for mining operations on such lands, namely the Indian lands program at 30 CFR Part 750, the relevant provisions of Part 740, and Part 746. The various sections of Part 740 that are proposed for inclusion in the list of applicable provisions are those that either specify or reference requirements pertaining to leased Federal coal, or are permitting requirements that have no equivalent counterpart in the Indian lands program at Part 750. Part 746 is proposed for inclusion in its entirety because all of its provisions, namely the process and requirements for the review and approval of mining plans and mining plan modifications, apply to leased Federal coal. The proposed provision would be designated as paragraph (g) and would read as follows:

Where surface coal mining and reclamation operations are on Indian lands, as the term Indian lands is defined at § 700.5, and the lands include leased Federal coal, the Indian lands program at part 750 and the following provisions of this subchapter apply:

(1) Section 740.1;
(2) Sections 740.4(a)(1), (b)(1), (b)(6), (d)(1)–(5) and (d)(9);
(3) Section 740.5;
(4) Section 740.11(d);
(5) Sections 740.13(a)(1)–(2), (c)(1)–(3) and (d)(2);
(6) Sections 740.15(a) and (d)(1);
(7) Sections 740.19(a)(1)–(2) and (b)(2); and
(8) Part 746

The proposed rule language would recognize the Indian lands program as the applicable regulatory program for purposes of SMCRA compliance on Indian lands containing leased Federal coal, while also identifying the Federal lands program requirements that must be met to ensure that the mining of Federal coal on such lands is carried out in accordance with the Mineral Leasing Act, as amended, and other applicable statutes governing leased Federal coal.

5. Section 746.13: Decision Document and Recommendation on Mining Plan

The regulations at Section 746.13 specify the requirements that OSM must meet in preparing and submitting to the Secretary a decision document recommending approval, disapproval or conditional approval of the mining plan for leased Federal coal. Section 746.13(f) requires the mining plan recommendation to reflect the ''findings and recommendations of the regulatory authority with respect to the permit application and the State program.'' As discussed earlier in this preamble, Indian lands containing leased Federal coal would not be subject to the requirements of the State program, but would instead be regulated under the provisions of the Indian lands program at 30 CFR Part 750. Therefore, OSM is proposing to replace the reference to the State program in Section 746.13(f) with ''applicable regulatory program'' in order to provide the necessary flexibility in the rule language.

C. 30 CFR Part 750: Requirements for Surface Coal Mining and Reclamation Operations on Indian Lands

The regulations at 30 CFR Part 750 govern surface coal mining and reclamation operations on Indian lands and comprise the Federal program for Indian lands. OSM is proposing to amend the Indian lands program to the extent necessary to address the regulatory and jurisdictional issues arising from the proposed clarification of the definition of Indian lands and to avoid confusion in implementation of the *Mescal* settlement as it relates to the mining of leased Federal coal on allotted lands. The proposed revisions are intended to clarify the regulatory requirements and consultation procedures that would apply to surface coal mining and reclamation operations involving allotted lands, including such lands containing leased Federal coal, and to ensure the continuing and uninterrupted regulation of mining operations that presently include such lands.

1. Section 750.6: Responsibilities

Regulation of Leased Federal Coal on Indian Lands

The regulations at 30 CFR 750.6(a)–(d) set forth the regulatory responsibilities of OSM, BLM, MMS and BIA, respectively, on Indian lands, including the required consultation and interagency coordination procedures. BLM's responsibilities concerning coal exploration and mining operations are specified at Section 750.6(b)(1)–(4). Section 750.6(b)(1) concerns BLM's responsibility to review and approve, conditionally approve, or disapprove coal exploration and mining plans on Indian lands as provided in BIA's regulations at 25 CFR Chapter I or in specific Indian mineral agreements. OSM is proposing rule language that would also recognize BLM's continuing responsibility to administer the Mineral Leasing Act, as amended, and other applicable statutes, with respect to coal mining, production and resource recovery and protection operations on Federal coal leases and licenses, regardless of surface ownership, as provided in 43 CFR Chapter II, Group 3400. This would include the Federal coal underlying the individual Indian trust allotments included within the McKinley Mine permit area. The proposed amendment is not intended to make any substantive change, but rather to recognize that BLM's existing jurisdiction under the MLA and other laws governing Federal coal resources would not be affected by the proposed rule. The proposed provision would be designated as 30 CFR 750.6(b)(2), and the subsequent paragraphs in Section 750.6(b) would be renumbered accordingly.

Consultation and Coordination on Allotted Lands

The regulations at Section 750.6(d) specify BIA's consultation responsibilities with respect to surface coal mining and reclamation operations on Indian lands. Section 750.6(d)(1) requires BIA to consult directly with and provide representation for Indian mineral owners and other Indian land owners in matters relating to surface coal mining and reclamation operations on Indian lands. The term ''Indian mineral owner'' is defined at Section 750.5 to include both individual Indians and Indian tribes who own land or mineral interests in land the title to which is held in trust by the United States or is subject to a restriction

against alienation imposed by the United States. Thus, the definition would encompass individual Indian allottees. In addition, Section 750.6(d)(2) provides that, after consultation with the affected tribe, BIA is responsible for reviewing and making recommendations to OSM concerning permit applications, renewals, revisions or transfers of permits, permit rights or performance bonds.

As noted earlier in this preamble, one of the consequences of this proposed clarification to the definition of Indian lands would be a change in the consultation procedures for surface coal mining and reclamation operations involving allotted lands located within the Navajo consolidation area. Specifically, consultation with individual allottee surface and/or mineral owners would be required when mining and reclamation activities involve such allottees' lands. Such consultation would be appropriately carried out by BIA pursuant to 30 CFR 750.6(d)(1).

Because allotted lands within the Navajo land consolidation area could potentially contain non-coal resources of significance to the tribe, OSM would consult with the Navajo Nation as appropriate to ensure that any such resources are identified and the tribe's interests and concerns addressed. OSM would carry out such consultation with the tribe pursuant to 30 CFR 750.6(a)(4). That regulation requires OSM to consult with the BIA and the affected tribe with respect to special requirements relating to the protection of non-coal resources of the area affected by surface coal mining and reclamation operations, and to assure operator compliance with such requirements.

As noted above, Section 750.6(d)(2) calls for BIA consultation with the affected tribe in reviewing and making recommendations to OSM concerning permit applications and other types of permitting actions, and performance bonds. However, that requirement is properly applied to lands held in trust for an Indian tribe; on allotted lands, where both the land (surface and/or mineral) ownership interest and the Federal trust relationship is with the individual allottees, BIA's responsibility to consult lies with the allottee land owners. Any tribal concerns related to mining operations on allotted lands would be addressed through OSM's consultation with the tribe in its capacity as the SMCRA regulatory authority on Indian lands.

The rule language at Section 750.6(d)(2) refers only to BIA's responsibility to consult with the affected tribe, and thus differs from Section 750.6(d)(1) which refers to BIA's responsibility to also consult with individual Indian mineral owners or other Indian land owners, as appropriate. Section 750.6(d)(2) is also inconsistent with this proposed rulemaking which calls for BIA to consult with Indian allottees when permitting actions for surface coal mining and reclamation operations involve allotted lands. Therefore, OSM is proposing to amend Section 750.6(d)(2) to refer to BIA's responsibility to consult with the affected tribe, Indian mineral owners, or other Indian land owners, as appropriate, prior to making recommendations to OSM concerning permit applications and performance bonds.

Section 750.6(d)(3) addresses BIA's responsibility to consult with the affected Indian tribe in reviewing mining plans and making recommendations to the Bureau of Land Management pursuant to BIA's regulations at 25 CFR 216.7. The regulations at 25 CFR Part 216 govern surface exploration, mining, and reclamation on Indian lands. The term ''mining plan,'' as used in those regulations, pertains specifically to Indian lands. It should not be confused with a mining plan for leased Federal coal, as used in OSM's Federal lands regulations at 30 CFR Parts 740 and 746, which is subject to a different set of statutory and regulatory requirements including the Mineral Leasing Act, as amended, and other applicable laws. Pursuant to 25 CFR 216.2, the regulations at Part 216 do not apply where minerals underlie lands ''the surface of which is not owned by the owner of the minerals.'' Prior to the *Mescal* settlement, the mineral estate for the vast majority of individual Indian trust allotments located within the Navajo consolidation area was federally owned, while the surface estate was owned by the allottees. However, with the issuance of supplemental trust patents to individual Indian allottees under the *Mescal* agreement, there is now the potential for surface coal mining operations, and associated mining plans, involving allottee-owned coal in the future. Therefore, OSM is proposing to amend the rule language at 30 CFR 750.6(d)(3) to specify BIA consultation with the affected tribe, Indian mineral owners, or other Indian land owners, as appropriate, in reviewing and making recommendations on mining plans on Indian lands.

2. Section 750.12: Permit Applications

Transfer of SMCRA Regulatory Jurisdiction on Allotted Lands

The regulations at 30 CFR 750.12 specify the applicable content and processing requirements for permit applications for surface coal mining operations on Indian lands. Under Section 750.12(c)(1), Part 774 applies to the processing of permit applications on Indian lands. This part specifies the requirements for permit revisions, permit renewals, and transfer, assignment or sale of permit rights. Under Section 774.11(b), the regulatory authority may, at any time, require reasonable revision of a permit to ensure compliance with the Act and the regulatory program.

OSM anticipates that the change in regulatory jurisdiction on allotted lands that would occur under this proposed rule would require us to invoke this provision at the McKinley Mine. Those lands are currently regulated under a State program permit issued by the New Mexico MMD, but would come under the purview of the Federal program for Indian lands as of the effective date of the rule change. Consequently, P&M would be required to submit to OSM a permit revision application incorporating the allotted lands portion of the mine into its Indian lands permit under the procedures described below.

Upon issuance of the final rule, OSM would send written notification to P&M, the Navajo Nation, New Mexico MMD, the Bureau of Indian Affairs, and the Bureau of Land Management of the imminent change in regulatory jurisdiction. The notification would advise P&M of the need to submit for OSM review a permit revision application incorporating the allotted lands currently under State permit at the McKinley Mine into its existing Federal permit. OSM would then review the application to determine whether any changes are necessary to bring the permit into compliance with the Federal program for Indian lands. If OSM determines that changes are necessary, the procedures of 30 CFR 750.12(c)(3)(ii) governing permit revisions on Indian lands would apply.

OSM invites comments on this proposed transition procedure, and is particularly interested in suggestions on how to minimize disruption to mine operations and the regulatory process during any transfer of jurisdiction. In addition, OSM is seeking comment on whether this procedure would require further changes to our regulations to include a provision analogous to 30 CFR 773.11(d)(1) which allows for continued operations under State program permits

when a Federal regulatory program supersedes an approved State program.

Indian Lands Containing Leased Federal Coal

OSM is proposing to amend Section 750.12(c) by adding a new paragraph pertaining specifically to Indian lands containing leased Federal coal. The proposed provision would reference the list of applicable regulatory requirements for such lands that OSM is proposing to include in the Federal lands program at 30 CFR 740.11(h) as part of this rulemaking. The proposed cross-reference to Section 740.11(h) would be designated as Section 750.12(c)(3), and the existing regulations at Section 750.12(c)(3) would be redesignated as Section 750.12(c)(4).

OSM is also proposing a change in the rule language at existing Section 750.12(c)(3)(i)(which would be redesignated as Section 750.12(c)(4)(i) under this proposed rulemaking). The regulations at Section 750.12(c)(3) prescribe special requirements for surface coal mining and reclamation operations on Indian lands. Section 750.12(c)(3)(i) concerns the transfer or assignment of leasehold interests on Indian lands and specifies that such transfers or assignments may be done ''only in accordance with 25 CFR parts 211 and 212.'' The regulations at 25 CFR Parts 211 and 212 govern leases for the development of, respectively, Indian tribal and individual Indian oil and gas, geothermal, and solid mineral resources. Thus, those regulations would not apply to Federal coal leases on Indian lands, including the four Federal coal leases underlying the allotted lands at the McKinley Mine. For Federal coal leases, any transfer or assignment of leasehold interests may be done only in accordance with BLM's regulations at 43 CFR Part 3453. Therefore, OSM is proposing to amend the rule language at what would be the newly designated Section 750.12(c)(4)(i) to reference 25 CFR Parts 211 and 212, as well as 43 CFR Part 3453, as applicable.

IV. Procedural Determinations

A. Executive Order 12866—Regulatory Planning and Review

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

1. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. The only geographic region where an economic impact would likely occur under the rule would be at the McKinley Mine in New Mexico. The direct and indirect economic impacts to the mine from the transfer of jurisdiction to OSM would extend only to the actual costs associated with submitting a permit revision application for those allotted lands that are currently regulated by the State of New Mexico. The cost would be extremely small in comparison to the size of the mine. The economic impacts of the rule with regard to AML fees were previously discussed in the preamble in section III.9.

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

3. This rule does not alter user fees or loan programs or the rights or obligations of their recipients. This rule would alter the allocation of AML fees that are collected from coal mining operations that include individual Indian trust allotments within their approved permit areas and are located within the Navajo Land Consolidation Area in New Mexico. Specifically, as of the effective date of the rule change, the 50% non-Federal share of AML fees derived from coal production on allotted lands within the consolidation area would be allocated to the Navajo Nation's portion of the AML fund, rather than to the State of New Mexico's portion of the fund. Only one mine in New Mexico would be affected by the rule at this time. Based upon current coal production figures at that mine, the amount of affected AML fees would be less than $500,000,000 annually. The rule could also affect the amount of annual grant monies that OSM provides to the State of New Mexico to support implementation of its SMCRA regulatory program because it would reduce the amount of land subject to State regulation, which could potentially decrease the State's annual regulatory funding. OSM anticipates that the reduction in grant monies would be about 4.15% of the State's yearly grant allocation.

4. The legal and policy issues raised in this rule are an expansion of issues previously raised during the implementation of SMCRA. The proposed rule asserts for the first time that specified allotted lands would be deemed to be Indian Lands. The State of New Mexico challenged OSM's 1984 regulations establishing the Federal program for Indian lands at 30 CFR Part 750. In response to that challenge, OSM agreed to issue a clarification of its 1984 regulatory preamble and disclaim any assertion that all individual allotments outside the boundaries of an Indian reservation were ''Indian lands'' for the purpose of SMCRA. *See Valencia Energy Co.*, 109 IBLA 59 (1989); and 53 FR 3992, 2993 (February 10, 1988). OSM has subsequently taken the position that this meant that OSM would address on a case-by-case basis whether allotments are ''Indian Lands.''

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on the findings that the regulatory additions in the rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets. As previously discussed, the proposed rule would have an economic impact on only one coal mine and one Indian Tribe.

C. Small Business Regulatory Enforcement Fairness Act

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

1. Does not have an annual effect on the economy of $100 million or more. The only geographic region where an economic impact will likely occur under the proposed rule would be in the vicinity of the McKinley Mine in New Mexico. More specifically, the Indian trust allotments (6,654 acres) in the McKinley Mine South Area permit would be deemed as Indian lands rather than private or Federal lands under the proposed rule and SMCRA regulatory jurisdiction on those lands would be transferred from the State of New Mexico to OSM as of the effective date of the proposed rule. OSM's regulatory jurisdiction on such lands would include the permitting, inspection and enforcement functions which are now performed by the State of New Mexico.

Currently, the McKinley Mine is owned and operated by Pittsburg & Midway. The direct or indirect economic impacts to P&M from the transfer of jurisdiction to OSM would extend only to the actual costs associated with submitting a permit revision application for those allotted lands that are now regulated by the

State of New Mexico. In addition, the productivity or employment in the local economy would not be affected solely due to the change of regulatory authority from State government to the Federal government. The proposed rule could potentially affect the amount of annual funding that OSM provides to the State of New Mexico to support the implementation of the State's Title V regulatory program under SMCRA. In determining the Title V grant amount, OSM uses a funding formula that includes, among other things, the total acreage that is subject to State regulatory jurisdiction. The proposed rulemaking would reduce the amount of land subject to State regulation, which could potentially result in a decrease in the State's annual Title V regulatory funding. Based upon the Federal lands funding option that New Mexico has chosen, OSM anticipates that the reduction in annual funding could be approximately 4.15 percent.

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

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

D. Unfunded Mandates

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

E. Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications.

F. Executive Order 12612—Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment for the reasons discussed above.

G. Executive Order 12988—Civil Justice Reform

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

H. Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* since it affects fewer than ten respondents.

I. National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA) of this proposed rule and has made a tentative finding that it would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. section 4332(2)(C). It is anticipated that a finding of no significant impact (FONSI) will be made for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see **ADDRESSES**). The EA will be completed and a finding made on the significance of any resulting impacts before we publish the final rule.

J. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading; for example, § 874.17 AML agency procedures for reclamation projects receiving less than 50 percent government funding.). (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

Author

The principal author of this proposed rule is Suzanne Hudak, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., N.W., Washington, D.C. 20240. Telephone: (202) 208–2661.

List of Subjects

30 CFR Part 700

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 740

Public lands, Mineral resources, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

30 CFR Part 746

Public lands—mineral resources, Reporting and recordkeeping requirements, Surface mining, underground mining.

30 CFR Part 750

Indians—lands, Reporting and recordkeeping requirements, Surface mining.

Dated: February 11, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, OSM is proposing to amend 30 CFR parts 700, 740, 746 and 750 as set forth below:

PART 700—GENERAL

1. The authority citation for part 700 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

2. In § 700.5, the definition of ''Indian lands'' is revised to read as follows:

§ 700.5 Definitions.

* * * * *

Indian lands means—

(a) All lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent or rights-of-way; and

(b) All lands including mineral interests held in trust for or supervised by an Indian tribe. Such lands include, but are not limited to, all allotments held in trust by the Federal government for an individual Indian or Indians, the Indian titles to which have not been extinguished, including rights-of-way

running through such allotments, where such allotments are located within a tribal land consolidation area approved by the Secretary or his authorized representative under 25 U.S.C. 2203.

* * * * *

PART 740—GENERAL REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON FEDERAL LANDS

3. The authority citation for part 740 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 30 U.S.C. 181 *et seq.*

4. Section 740.1 is amended by adding a sentence at the end of the section to read as follows:

§ 740.1 Scope and purpose.

It also provides the process and requirements for the mining of leased Federal coal on Indian lands.

5. Section 740.4 is amended by removing the word ''and'' at the end of paragraph(b)(4), removing the period at the end of paragraph(b)(5) and adding a semicolon and the word ''and'' at the end of the same paragraph, and adding a new paragraph (b)(6) to read as follows:

§ 740.4 Responsibilities.

* * * * *

(b) * * *

(6) When Federal coal is located on Indian lands, as the term Indian lands is defined at § 700.5 of this chapter, regulating surface coal mining and reclamation operations in accordance with the Indian lands program at part 750 of this chapter and the requirements in § 740.11(h).

* * * * *

6. In paragraph (a) of § 740.5, the definitions of ''Leased Federal coal'' and ''Permit application package'' are revised to read as follows:

§ 740.5 Definitions.

(a) * * *

Leased Federal coal means coal leased by the United States under 43 CFR Group 3400.

* * * * *

Permit application package means a proposal to conduct surface coal mining and reclamation operations on Federal lands or on Indian lands containing leased Federal coal, including the following materials:

(1) An application for a permit, permit revision or permit renewal;

(2) All the information required by the Act, this subchapter, the applicable regulatory program, any applicable cooperative agreement and all other applicable laws and regulations; and

(3) For leased Federal coal, the information required by the Mineral Leasing Act and its implementing regulations.

* * * * *

7. In § 740.11, paragraph (h) is added to read as follows:

§ 740.11 Applicability.

* * * * *

(h) Where surface coal mining and reclamation operations are on Indian lands, as the term Indian lands is defined at § 700.5 of this chapter, and the lands include leased Federal coal, the Indian lands program at part 750 of this chapter and the following provisions of this subchapter apply:

(1) Section 740.1;

(2) Sections 740.4(a)(1), (b)(1), (b)(6), (d)(1) through (5) and (d)(9); (3) Section 740.5;

(4) Section 740.11(d);

(5) Sections 740.13(a)(1), (2), (c)(1) through (3) and (d)(2);

(6) Sections 740.15(a) and (d)(1);

(7) Sections 740.19(a)(1), (2) and (b)(2); and

(8) Part 746.

PART 746—REVIEW AND APPROVAL OF MINING PLANS

8. The authority citation for part 746 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and 30 U.S.C. 181 *et seq.*

9. In § 746.13, paragraph (f) is revised to read as follows:

§ 746.13 Decision document and recommendation on mining plan.

* * * * *

(f) The findings and recommendations of the regulatory authority with respect to the permit application and the applicable regulatory program; and

* * * * *

CFR PART 750—REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS

10. The authority citation for part 750 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

11. In § 750.6, paragraphs (b)(2) through (4) are redesignated as (b)(3) through (5), a new paragraph (b)(2) is added, and paragraphs (d)(2) and (3) are revised to read as follows:

§ 750.6 Responsibilities.

* * * * *

(b) * * *

(2) Administering the Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and other applicable statutes, with respect to coal mining, production, and resource recovery and protection operations on Federal coal leases and licenses, regardless of surface ownership, as provided in 43 CFR Chapter II, Group 3400;

* * * * *

(d) * * *

(2) After consultation with the affected tribe, Indian mineral owners, or other Indian land owners, as appropriate, reviewing and making recommendations to OSM concerning permit applications, renewals, revisions or transfers of permits, permit rights or performance bonds; and

(3) After consultation with the affected tribe, Indian mineral owners or other Indian land owners, as appropriate, reviewing and making recommendations to the Bureau of Land Management under 25 CFR 216.7.

12. In § 750.12, paragraph (c)(3) is redesignated as paragraph (c)(4), a new paragraph (c)(3) is added, and the last sentence of newly designated paragraph (c)(4)(i) is revised, to read as follows:

§ 750.12 Permit applications.

* * * * *

(c) * * *

(3) On Indian lands containing leased Federal coal, the requirements of § 740.11(h) of this chapter apply.

(4) * * *

(i) * * * Leasehold interests may be transferred or assigned in accordance with 25 CFR parts 211 or 212 or 43 CFR part 3453, as applicable.

* * * * *

[FR Doc. 99–4153 Filed 2–18–99; 8:45 am]

BILLING CODE 4310–05–P

Friday
February 19, 1999

Part IV

Department of Justice

Immigration and Naturalization Service

8 CFR Parts 3, 103, 208, etc.

Regulations Concerning the Convention Against Torture; Interim Rule

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 103, 208, 235, 238, 240, 241, 253, and 507

[INS No. 1976–99; AG Order No. 2207–99]

RIN 1115–AF39

Regulations Concerning the Convention Against Torture

AGENCY: Immigration and Naturalization Service, and Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends Department of Justice regulations by establishing procedures for raising a claim for protection from torture, as directed by the Foreign Affairs Reform and Restructuring Act of 1998. Section 2242 of that Act requires the heads of appropriate agencies to prescribe regulations for implementing United States obligations under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture or Convention). Under Article 3 of the Convention Against Torture (Article 3), the United States has agreed not to ''expel, return ('refouler') or extradite'' a person to another state where he or she would be tortured. The interim rule establishes procedures for ensuring compliance with Article 3 with respect to removal of aliens from the United States by integrating many Convention Against Torture requests into the present scheme governing asylum and withholding determinations before the Immigration Court. For persons subject to reinstatement, administrative removal, expedited removal, or other streamlined proceedings, excluding those relating to aliens inadmissible on security and related grounds, the rule establishes a screening mechanism followed by Immigration Court review that is similar to the screening procedure currently used in determining credible fear under expedited removal. The rule also establishes ''deferral of removal,'' a new, limited form of protection that will be accorded aliens who would be tortured in the country of removal but who are barred from withholding of removal. Finally, this interim regulation serves as notice to the public that, upon the effective date of this rule, the informal procedure currently in place for considering Convention Against Torture requests will end and those persons who have raised a claim under the informal procedure will be given an opportunity, as prescribed by this rule, to have their cases reviewed under the new procedures.

DATES: *Effective date:* This interim rule is effective March 22, 1999.

Comment date: written comments must be submitted on or before April 20, 1999.

ADDRESSES: Please submit written comments in original and three copies to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1976–99 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: For matters relating to the Immigration and Naturalization Service: Dorothea Lay, 425 I Street, NW, Washington, DC 20536, telephone number (202) 514–2895. For matters relating to the Executive Office for Immigration Review: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia, 22041, telephone number (703) 305–0470.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1998, the President signed into law legislation which requires that ''[n]ot later than 120 days after the date of enactment of this Act, the heads of the appropriate agencies shall prescribe regulations to implement the obligations of the United States under Article 3 of the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention.'' Section 2242(b) of the Foreign Affairs Reform and Restructuring Act of 1998 (Pub. L. 105–277, Division G, Oct. 21, 1998).

Obligations under the Convention Against Torture have been in effect for the United States since November 20, 1994. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984) [hereinafter Convention or Convention Against Torture]. On October 21, 1994, President Clinton deposited the United States instrument of ratification of the Convention with the Secretary General of the United Nations. Consistent with its terms, the Convention Against Torture entered into force for the United States 30 days later. Under Article 3, the United States had agreed not to ''expel, return ('refouler') or extradite'' a person to another state where he or she would be tortured. The Department of State is responsible for carrying out extradition requests and will promulgate regulations to ensure compliance with Article 3 in those cases. In other cases, the Attorney General is charged with expelling or returning aliens from the United States to other countries. This rule is published pursuant to this mandate to implement United States obligations under Article 3 in the context of the Attorney General's removal of aliens Article 3 provides as follows:

1. No State Party shall expel, return, (''refouler'') or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant, or mass violations of human rights.

This Article is similar in some ways to Article 33 of the 1951 Convention relating to the Status of Refugees. The Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 (hereinafter Refugee Convention). Article 33 provides that ''[n]o Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion.'' The United States currently implements Article 33 of the Refugee Convention through the withholding of removal provision in section 241(b)(3) (formerly section 243(h)) of the Immigration and Nationality Act (INA or the Act). That provision, as interpreted by the courts, requires the Attorney General to withhold an alien's removal to a country where it is more likely than not that the alien's life or freedom would be threatened on account of one of the five grounds mentioned above. *See INS* v. *Stevic*, 467 U.S. 407, 429–30 (1984).

However, there are some important differences between withholding of removal under section 241(b)(3) of the Act and Article 3 of the Convention Against Torture. First, several categories of individuals, including persons who

assisted in Nazi persecution or engaged in genocide, persons who have persecuted others, persons who have been convicted of particularly serious crimes, persons who are believed to have committed serious non-political crimes before arriving in the United States, and persons who pose a danger to the security of the United States, are ineligible for withholding of removal. *See* INA section 241(b)(3)(B). Article 3 of the Convention Against Torture does not exclude such persons from its scope. Second, section 241(b)(3) applies only to aliens whose life or freedom would be threatened on account of race, religion, nationality, and membership in a particular social group or political opinion. Article 3 covers persons who fear torture that may not be motivated by one of those five grounds. Third, the definition of torture does not encompass all types of harm that might qualify as a threat to life or freedom. Thus, the coverage of Article 3 is different from that of section 241(b)(3): broader in some ways and narrower in others.

Until the October 21, 1998 legislation, there was no statutory provision to implement Article 3 of the Convention Against Torture in United States domestic law. When the United States Senate gave advice and consent to ratification of the Convention Against Torture, it made a declaration that Articles 1 through 16 were not self-executing. Recognizing, however, that ratification of the Convention represented a statement by the United States to the international community of its commitment to comply with the Convention's provisions to the extent permissible under the Constitution and existing federal statutes, the Department of Justice sought to conform its practices to the Convention by ensuring compliance with Article 3 in the case of aliens who are subject to removal from the United States.

In order to conform to the Convention before the enactment of implementing legislation, the Immigration and Naturalization Service (INS or Service) adopted a pre-regulatory administrative process to assess the applicability of Article 3 to individual cases in which an alien is subject to removal. Under this pre-regulatory administrative process, upon completion of deportation, exclusion, or removal proceedings and prior to execution of a final order of removal, the INS has considered whether removing an alien to a particular country is consistent with Article 3. If it is determined that the alien could not be removed to the country in question consistent with Article 3, the INS has used its existing discretionary authority to ensure that the alien is not removed to that country for so long as he or she is likely to be tortured there. *See* INA § 103(a); 8 CFR 2.1.

In formulating its pre-regulatory administrative process to conform to Article 3 in the context of the removal of aliens, the INS has been careful not to expand upon the protections that Article 3 grants. Only execution of an order of removal to a country where an alien is more likely than not to be tortured would violate the Convention. Therefore, the INS has not addressed the question of whether Article 3 prohibits removal in an individual case until there is a final administrative order of removal to a place where an alien claims that he or she would be tortured, and until all appeals, requests for review, or other administrative or judicial challenges to execution of that order have been resolved. This approach has allowed the INS to address the applicability of Article 3 to a case only when actually necessary to comply with the Convention. It has also allowed an individual alien to exhaust all avenues for pursuing any other more extensive benefit or protection for which he or she may be eligible before seeking the minimal guarantee provided by Article 3 that he or she will not be returned to a specific country where it is likely that he or she would be tortured. At the same time, this approach has allowed the INS, the agency responsible for executing removal orders, to ensure that no order is executed under circumstances that would violate the Convention.

Goals of Interim Rule

Pursuant to statutory mandate, the Department of Justice now publishes this rule in order to implement the United States' Article 3 obligations in the context of the removal of aliens by the Attorney General. The rule is published as an interim rule, effective 30 days after the date of publication. This rule is intended to create fair and efficient provisions to implement Article 3 within the overall regulatory framework for the issuance of removal orders and decisions about the execution of such orders.

The primary goals of this rule are to establish procedures that ensure that no alien is removed from the United States under circumstances that would violate Article 3 without unduly disrupting the issuance and execution of removal orders consistent with Article 3. To this end, we have designed a system that will allow aliens subject to the various types of removal proceedings currently afforded by the immigration laws to seek, and where eligible, to be accorded protection under Article 3. At the same time, we have created mechanisms to quickly identify and resolve frivolous claims to protection so that the new procedures cannot be used as a delaying tactic by aliens who are not in fact at risk.

In cases subject to streamlined, expedited removal processes under current law, the rule employs screening mechanisms to quickly identify potentially meritorious claims to protection and to resolve frivolous ones with dispatch. For example, the rule allows for the screening of aliens arriving at ports of entry to determine whether they establish a credible fear of torture. This screening will be conducted in conjunction with the existing credible fear of persecution screening process, so that it will not complicate or delay the expedited removal process established by Congress for arriving aliens. If an alien passes this threshold-screening standard, his or her claim for protection under Article 3 will be further examined by an immigration judge in the context of removal proceedings under section 240 of the Act. The screening mechanism also allows for the expeditious review by an immigration judge of a negative screening determination and the quick removal of an alien with no credible claim to protection.

Furthermore, the rule establishes a new screening process to rapidly identify and assess both claims for withholding of removal under section 241(b)(3) of the Act and for protection under the Convention by either aliens subject to administrative removal for aggravated felons under section 238(b) of the Act or to reinstatement of a previous order of removal under section 241(a)(5) of the Act. Modeled on the credible fear screening mechanism, this screening process will also allow for the fair and expeditious resolution of such claims without unduly disrupting the streamlined removal processes applicable to these aliens.

The cases of alien terrorists and other aliens subject to administrative removal under section 235(c) of the Act will be handled through the administrative process in which the INS issues and executes the removal order. Cases handled under section 235(c) are only a few each year, and typically involve highly sensitive issues and adjudication based on classified information under tight controls. Thus, by retaining the ability to assess the applicability of Article 3 through the administrative removal process, the INS will both maintain a workable process and ensure U.S. compliance with Article 3 in these unusual cases. Similarly, the regulations

provide that an alien whose removal has been ordered by the Alien Terrorist Removal Court under the special procedures set forth in Title V of the Act shall not be removed to a particular country if the Attorney General determines, in consultation with the Secretary of State, that removal to that country would violate Article 3.

For aliens subject to removal proceedings under section 240 of the Act, exclusion proceedings, or deportation proceedings, a claim to protection under the Convention Against Torture will be raised and considered, along with any other applications, during removal proceedings before an immigration judge. Both the alien and the INS will have the ability to appeal decisions of the immigration judge to the Board of Immigration Appeals (the Board). This will allow the alien to seek review of this important decision, and will also allow the INS to use the review mechanism to ensure that decisions about the applicability of Article 3 are made consistently and according to the high standards of proof required by Article 3 itself. At the same time, the availability of review will not expand the process already available to aliens in proceedings under section 240, who under current law already have the opportunity to seek Board review of decisions of the immigration judge.

Nor does this rule expand the availability of judicial review for aliens who make claims to protection under the Convention Against Torture. The statute requiring regulatory implementation of obligations under Article 3 explicitly provides that it does not authorize judicial review of these regulations. Section 2242(d) of the Foreign Affairs Reform and Restructuring Act of 1998. The rule restates at § 208.18(e) the statutory mandate that the only available judicial review for Convention Against Torture claims is when such claims are heard as part of the review of a final order of removal pursuant to section 242 of the Act. Such review remains subject to the requirements and limitations of section 242. Where a court has jurisdiction to consider a Convention Against Torture claim, it may not, except as authorized by section 242, consider other claims regarding the alien's removal.

Structure of Rule

Generally, the rule creates two separate provisions for protection under Article 3 for aliens who would be tortured in the country of removal. The first provision establishes a new form of withholding of removal under § 208.16(c). This type of protection is only available to aliens who are not barred from eligibility for withholding of removal under section 241(b)(3)(B) of the Act. The second provision, under § 208.17(a), concerns aliens who would be tortured in the country of removal but who are subject to the bars contained in section 241(b)(3)(B) of the Act. These aliens may only be granted deferral of removal, a less permanent form of protection than withholding of removal and one that is more easily and quickly terminated if it becomes possible to remove the alien consistent with Article 3. Deferral of removal will be granted based on the withholding of removal application to an alien who is likely to be tortured in the country of removal but who is barred from withholding of removal. Section 208.17(d) sets out a special, streamlined procedure through which the INS may seek to terminate deferral of removal when appropriate.

Withholding of Removal Under the Convention Against Torture

Revised § 208.16(c) creates a new form of withholding of removal, which will be granted to an eligible alien in removal proceedings who establishes that he or she would be tortured in the proposed country of removal. This section references new § 208.18(a), which contains the definition of torture, and provides that this definition will be applied in all determinations about eligibility for this new form of withholding, or for deferral of removal.

An alien granted withholding under new § 208.16(c) would be treated similarly to an alien granted withholding of removal under § 208.16(b), the regulatory provision implementing section 241(b)(3) of the Act. The rule provides at § 208.16(c)(2) that, in order to be eligible for withholding of removal under Article 3, an alien must establish that it is more likely than not that he or she would be tortured in the country in question. Imposition of this burden of proof on the alien gives effect to one of the Senate understandings upon which ratification was conditioned, which provides that ''the United States understands that the phrase, 'where there are substantial grounds for believing that he would be in danger of being subjected to torture,' as used in Article 3 of the Convention, to mean 'if it is more likely than not that he would be tortured.' '' The ratification history makes clear that this understanding was intended to ensure that the standard of proof for Article 3 would be the same standard as that for withholding of removal under section 241(b)(3) of the Act, then section 243(h) of the Act. *See, e.g.*, Convention Against Torture, *submitted to the Senate*, May 20, 1988, S. Treaty Doc. No. 100–20, at 6 (1988) (hereinafter S. Treaty Doc. No. 100–20).

Section 208.16(c)(3) also directs that all evidence relevant to the possibility of future torture should be considered when making the determination as to whether the alien is more likely than not to be tortured. It specifically provides that evidence of past torture inflicted on the applicant should be considered, because evidence of past torture may be probative as to whether future torture is likely.

Section 208.16(c)(3) also requires that, in determining whether the applicant has met his or her burden of proof, the decision-maker may consider any evidence that the alien may be able to relocate to an area of the country of removal where he or she is not likely to be tortured. Consideration of this factor is consistent with long-established precedent in the context of the adjudication of requests for asylum and withholding of removal under section 241(b)(3) of the Act, and is relevant to the likelihood that an alien would be tortured if returned to a specific country. This section also provides that, where applicable, the adjudicator will consider evidence of gross, flagrant, or mass violations of human rights committed within the country in question. This requirement is drawn directly from clause 2 of Article 3. The words ''where applicable'' indicate that, in each case, the adjudicator will determine whether and to what extent evidence of human rights violations in a given country is in fact a relevant factor in the case at hand. Evidence of the gross and flagrant denial of freedom of the press, without more, for example, may not tend to show that an alien would be tortured if returned to that country. *See, e.g.*, S. Treaty Doc. No. 100–20, at 20. The rule further directs that any other relevant information about country conditions in the country of removal be considered.

Applicants for withholding under § 208.16(c) will be subject to the mandatory bars to withholding contained in section 241(b)(3)(B) of the Act. Section 241(b)(3)(B) of the Act bars from withholding of removal aliens: who have assisted in Nazi persecution or engaged in genocide; who have ordered, incited, assisted or otherwise participated in the persecution of others; and who, having been convicted of a particularly serious crime, pose a danger to the community of the United States. The section 241(b)(3)(B) bar also applies when there are serious reasons to believe that the alien has committed a serious non-political crime outside the

United States before arriving in the United States or there are reasonable grounds to believe that the alien is a danger to the security of the United States. The legislation implementing Article 3 provides that ''[t]o the maximum extent consistent with the obligations of the United States under the Convention, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention, the regulations described in subsection (b) [mandating promulgation of regulations to implement Article 3] shall exclude from the protection of such regulations aliens described in section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)(B)).'' Section 2242(c) of the Foreign Affairs Reform and Restructuring Act of 1998. Thus, consistent with the statutory directive, the advantages of a grant of withholding of removal will not be available to such aliens. Rather, their protection from return to a country where they would be tortured, as required by the Convention, will be effected through a less extensive form of protection, i.e., deferral of removal, established in § 208.17(a).

Deferral of Removal Under the Convention Against Torture

Although aliens who are barred from withholding of removal under § 241(b)(3)(B) of the Act are not eligible for withholding under 208.16(c), the Article 3 implementing statute directs that any exclusion of these aliens from the protection of these regulations must be consistent with United States obligations under the Convention, subject to United States reservations, understandings, declarations, and provisos conditioning ratification. Section 2242(c) of the Foreign Affairs Reform and Restructuring Act of 1998. Article 3 prohibits returning any person to a country where he or she would be tortured, and contains no exceptions to this mandate. Nor do any of the United States reservations, understandings, declarations, or provisos contained in the Senate's resolution of ratification provide that the United States may exclude any person from Article 3's prohibition on return because of criminal or other activity or for any other reason. Indeed, the ratification history of the Convention Against Torture clearly indicates that the Executive Branch presented Article 3 to the Senate with the understanding that it ''does not permit any discretion or provide for any exceptions * * *.'' Convention Against Torture: Hearing Before the Senate Comm. on Foreign Relations, 101st Cong., 18 (1990) (statement of Mark Richard, Deputy Assistant Attorney General for the Criminal Division, DOJ).

Wherever possible, subsequent acts of Congress must be construed as consistent with treaty obligations. *See e.g., Cook* v. *United States,* 288 U.S. 102, 120 (1933) (''[a] treaty will not be deemed to have been abrogated or modified by a later statute, unless such purpose on the part of Congress has been clearly expressed.''). Here, Congress has not indicated an intent to modify the obligations imposed by Article 3. In fact, Congress has clearly expressed its intent that any exclusion of aliens described in section 241(b)(3)(B) of the Act from the protection of these regulations must be consistent with Article 3. The obligation not to return such an alien to a country where he or she would be tortured remains in effect. Thus, while this rule does not extend the advantages associated with a grant of withholding of removal to aliens barred under section 241(b)(3)(B) of the Act, it does ensure that they are not returned to a country where they would be tortured.

To this end, the rule creates a special provision under § 208.17(a) for deferral of removal when an alien described in section 241(b)(3)(B) of the Act has been ordered removed to a country where it has been determined that he or she would be tortured. The process is as follows: Before determining whether the bars described in section 241(b)(3)(B) of the Act apply to withholding removal of an alien under the Convention Against Torture, the immigration judge is required to find whether the alien is likely to be tortured in the country of removal. Only after this finding is made does the immigration judge decide, as required by § 208.16(d), whether the statutory bars to withholding of removal apply. If the bars do not apply, the immigration judge will grant withholding of removal to an alien who has been determined to be likely to be tortured in the country of removal. If the immigration judge finds that the bars apply, § 208.17(a) requires the immigration judge to defer removal of an alien to a country where the alien is likely to be tortured. The alien need not apply separately for deferral because this form of protection will be accorded automatically, based on the withholding application, to an alien who is barred from withholding but is likely to be tortured in the country of removal. While the order of deferral is in effect, the alien will not be returned to the country in question.

Section 208.17(a) is subject to the same standard of proof and definitional provisions as § 208.16(c). This will ensure that compliance with Article 3 is complete and consistent in the cases of aliens who are barred from withholding as well as in the cases of aliens who are not barred from withholding. However, an order of deferral provides a much more limited form of protection than does a grant of withholding of removal. An order of deferral would not confer upon the alien any lawful or permanent immigration status in the United States and would be subject to streamlined and expeditious review and termination if it is determined that it is no longer likely that the alien would be tortured in the country to which he or she has been ordered removed. Further, like withholding, deferral of removal is effective only with respect to the particular country in question and does not alter the government's ability to remove the alien to another country where he or she would not be tortured. The rule requires the immigration judge to inform the alien of the limited nature of the deferral order at the time such order is entered.

In addition, an order deferring removal to a particular country will not alter INS authority to detain an alien who is otherwise subject to detention. Section 241(a)(6) of the Act provides a variety of grounds for INS in its discretion to detain beyond the removal period an alien under a final order who cannot be removed. These include, most importantly, the discretion to detain an alien granted deferral of removal under Article 3 who is removable based on security grounds, based on certain criminal offenses, or who has been determined to pose a risk to the community. This is consistent with the Article 3 implementing statute, which provides that ''[n]othing in this section shall be construed as limiting the authority of the Attorney General to detain any person under any provision of law, including, but not limited to, any provision of the Immigration and Nationality Act.'' Section 2242(e) of the Foreign Affairs Reform and Restructuring Act of 1998. Section 208.17(c) of the interim rule provides that decisions about the detention of detainable aliens who have been granted deferral of removal will be made according to standard procedures under 8 CFR part 241.

Termination of Deferral of Removal

The most important distinction between withholding of removal and deferral of removal is the mode of termination. Section 208.17(d) will provide for a streamlined termination process for deferral of removal when it is no longer likely that an alien would be tortured in the country of removal.

Under existing regulations, withholding can only be terminated when the government moves to reopen the case, meets the standards for reopening, and meets its burden of proof to establish by a preponderance of the evidence that the alien is not eligible for withholding. The termination process for deferral of removal is designed to be much more accessible, so that deferral can be terminated quickly and efficiently when appropriate.

At any time while the order of deferral is in effect, the INS District Counsel for the district with jurisdiction over an alien granted deferral of removal may move the immigration court to schedule a hearing to determine whether the deferral order can be terminated. The INS motion will not be subject to the normal motion to reopen requirement that the moving party seek to offer evidence that was previously unavailable (i.e., could not have been discovered and presented at the previous hearing) and that establishes a *prima facie* case for termination. Rather, the Service's motion will be granted and a termination hearing will be scheduled on an expedited basis if the Service meets a lower threshold, which requires only that the evidence was not considered at the previous hearing and is relevant to the possibility that the alien would be tortured in the country of removal. This will allow the Service to monitor cases in which an order of deferral is in effect, and to bring such cases for termination hearings when it appears that the alien may no longer face likely torture in the country in question.

The Immigration Court will provide the alien with notice of the time, place, and date of the termination hearing, and will have the opportunity to submit evidence to supplement his or her initial application for withholding, which was the basis for the deferral order. As is the case with initial asylum and withholding applications, the original application, along with any supplemental information submitted by the alien, will be forwarded to the Department of State, which may comment on the case at its option. At the termination hearing, it will be the alien's burden to establish that it is more likely than not that he or she would be tortured in the country of removal. The immigration judge will make a *de novo* determination about the alien's likelihood of torture in the country in question. If the immigration judge determines that the alien is more likely than not to be tortured in the country to which removal has been deferred, the order of deferral shall remain in place. If the alien fails to meet the burden of proof, the deferral order will be terminated. If the alien establishes that he or she still requires protection under the Convention Against Torture, the deferral order will remain in effect. Appeal of the immigration judge's decision shall lie to the Board.

Deferral of removal may also be terminated at the alien's written request under § 208.17(e). For termination on this basis, the rule requires that the immigration judge determine whether the alien's request is knowing and voluntary. If necessary, the immigration judge may conduct a hearing to make this determination. If it is determined that the alien's request for termination is not knowing and voluntary, deferral will not be terminated on this basis.

Implementation of the Convention Against Torture

Section 208.18 sets out a number of provisions governing the implementation of the Convention Against Torture provisions. This section contains the definition of torture that will apply in both the withholding and deferral contexts, rules about the applicability of the new provisions, and a section clarifying that this rule does not expand the availability of judicial review to aliens who assert claims to protection under the Convention Against Torture.

Definition of Torture

Section 208.18(a) provides the definition of torture and of terms within that definition. Initially, consistent with the statute, it provides that the regulatory definition of torture incorporates the definition in Article 1 of the Convention, as interpreted and modified by United States reservations, understandings, declarations and provisos. The remainder of the definition section is drawn directly from the language of the Convention, the language of the reservations, understandings and declarations contained in the Senate resolution ratifying the Convention, or from ratification history.

Section 208.18(a)(1) contains the first sentence of Article 1, providing the basic contours of the definition of torture. It does not attempt to list the types of acts that would constitute torture, but rather expresses basic elements that must be present in order for an act to be torture: It must be an act causing severe pain or suffering, whether physical or mental, intentionally inflicted on a person. Article 16, which refers to ''other acts of cruel, inhuman or degrading treatment or punishment, which do not amount to torture,'' confirms that, as provided in § 208.18(a)(2), torture is an extreme form of cruel and inhuman treatment. *See, e.g.*, S. Treaty Doc. No. 100–20 at 23.

Section 208.18(a)(3) provides that torture ''does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.'' This is drawn from the second sentence of Article 1. The Senate adopted an understanding providing that ''with reference to article 1 of the Convention, the United States understands that 'sanctions' includes judicially-imposed sanctions and other enforcement actions authorized by United States law or by judicial interpretation of such law. Nonetheless, the United States understands that a State Party could not through its domestic sanctions defeat the object and purpose of the Convention to prohibit torture.'' 136 Cong. Rec. 36198 (1990). Therefore § 208.18(a)(3) also provides that ''[l]awful sanctions include judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty, but do not include sanctions that defeat the object and purpose of the Convention Against Torture to prohibit torture.'' This paragraph does not require that, in order to come within the exception, an action must be one that would be authorized by United States law. It must, however, be legitimate, in the sense that a State cannot defeat the purpose of the Convention to prohibit torture.

Senate understandings also provide that ''the United States understands that international law does not prohibit the death penalty, and does not consider this Convention to restrict or prohibit the United States from applying the death penalty consistent with the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States, including any constitutional period of confinement prior to the imposition of the death penalty.'' This understanding is embodied in § 208.18(a)(3)'s inclusion of the death penalty in the description of lawful sanctions that do not constitute torture. The purpose of the Senate's understanding on the death penalty is to clarify that the Convention does not prohibit the United States from applying the death penalty consistent with United States constitutional standards. This concept will likely have limited application in the context of Article 3 implementation. It means simply that the constitutionally sufficient imposition of the death penalty in the United States is not torture. The understanding does not mean, however, that any imposition of the death penalty by a foreign state that fails to satisfy United States

constitutional requirements constitutes torture. Any analysis of whether the death penalty is torture in a specific case would be subject to all requirements of the Convention's definition, the Senate's reservations, understandings, and declarations, and the regulatory definitions. Thus, even if imposition of the death penalty would be inconsistent with United States constitutional standards, it would not be torture if it were imposed in a legitimate manner to punish violations of law. Similarly, it would not be torture if it failed to meet any other element of the definition of torture.

The definition of torture can, in limited circumstances, include severe mental pain and suffering. Section 208.18(a)(4) provides a detailed and restrictive definition of the type of severe mental harm that can constitute torture. This language is drawn directly from the Senate's understandings. *See* 136 Cong. Rec. 36198.

Section 208.18(a)(5) requires that, in order to qualify as torture, an act must be specifically intended to inflict severe pain or suffering, a requirement clearly imposed by United States understandings. *Id*. Thus, an act that results in unanticipated or unintended severity of pain and suffering is not torture. *See, e.g.*, S. Treaty Doc. No. 100–20, at 19.

Section 208.18(a)(6) provides that, for an act to constitute torture, the victim of the act must be in the custody or physical control of the perpetrator. Thus, harm, even severe pain and suffering, inflicted on a person who is not within the perpetrator's custody or physical control, would not qualify as torture. Again, the language of this regulatory provision is taken directly from the Senate understandings. *See* 136 Cong. Rec. 36198.

Article 1 of the Convention Against Torture requires that torture must be inflicted ''by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.'' Senate understandings provide that ''the term 'acquiescence' requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his legal responsibility to intervene to prevent such activity.'' 136 Cong. Rec. 36198. Section 208.18(a)(7) mirrors this requirement. Thus the definition of torture includes only acts that occur in the context of governmental authority. *See, e.g.*, S. Treaty Doc. No. 100–20, at 19.

Section 208.18(a)(8) provides that noncompliance with applicable legal procedural standards does not *per se* constitute torture. Again, this provision mirrors Senate understandings. 136 Cong. Rec. 36198.

Applicability of New Provisions

Section 208.18(b)(1) provides that aliens who are in exclusion, deportation, or removal proceedings as of the effective date of this rule may seek withholding under the Convention Against Torture, and if applicable be considered for deferral under the Convention, through the procedures established by this rule. Section 208.18(b)(2) also establishes special procedures to provide a reasonable opportunity to request consideration for protection under Article 3 for aliens who were either ordered removed prior to the effective date of this rule, or whose removal orders become final prior to the effective date of the rule. Such aliens will be given a 90-day window of time in which to file a motion to reopen before the immigration court or before the Board of Immigration Appeals, to apply for protection under this rule. Any motion filed by such an alien within 90 days of the effective date of this rule, March 22, 1999, will not be subject to the normal requirement that the motion must seek to present new evidence that was unavailable and could not have been presented at the previous hearing. Nor will such a motion be subject to the normal time and numerical limitations on motions to reopen under §§ 3.2 and 3.23. Such a motion will, however, be subject to the other requirements set out in the regulations for a motion to reopen. Therefore it will not be granted unless the evidence sought to be offered establishes a prima facie case that the alien's removal would violate Article 3 of the Convention Against Torture. Similarly, like other motions to reopen, such a motion will not automatically stay the alien's removal. Rather, the alien must request a stay of removal at the time of filing the motion to reopen.

Aliens Who Requested Protection Under the Convention Through the INS Pre-regulatory Administrative Process To Ensure Compliance With Article 3

As explained previously, the INS has, prior to the effective date of this rule, conducted a pre-regulatory administrative process to comply with Article 3 of the Convention Against Torture until implementing legislation was enacted and obligations under that Article could be implemented by this rule. Section 208.18(b)(3) of this rule provides that, after the effective date of this rule, the INS pre-regulatory administrative process for ensuring compliance with Article 3 will end. After the effective date of this rule, except as otherwise provided, the INS will no longer stay an alien's removal based only on a request for protection under Article 3, nor will it consider the applicability of Article 3 to an individual case under its pre-regulatory administrative process.

Section 208.18(b)(4) provides that the new procedures established by this rule to provide for the consideration of claims to protection under the Convention Against Torture do not apply to cases in which the Service, prior to the effective date of this rule, has made a final administrative determination about the applicability of Article 3. This section provides that, if the Service has determined under its pre-regulatory administrative process that an alien cannot be removed to a particular country consistent with Article 3, the alien be considered to have been granted withholding of removal under § 208.16(c), unless the alien is subject to mandatory denial of withholding under § 208.16(d) (2) or (3). If such an alien is barred from withholding of removal, he or she will be considered to have been granted deferral of removal under § 208.17(a). Similarly, if an alien was determined under the pre-regulatory administrative process not to require protection under Article 3, that alien will be considered to have been finally denied withholding of removal under § 208.16(c) and deferral of removal under § 208.17(a). This paragraph applies only to cases in which the Service actually reached a final determination about the applicability of Article 3 to an individual case.

A different regime will apply to aliens who requested protection under the pre-regulatory administrative process but did not receive a final determination from the Service. The Service will provide notice about the end of the pre-regulatory administrative process to such aliens. This notice will inform the alien of the new regulatory process through which Article 3 claims will be processed. The notice will also explain that an alien who was ordered removed or whose removal order became final prior to the effective date of this rule may obtain consideration of a claim under Article 3 only through the procedures set out in this rule. An alien under a final removal order issued by EOIR may obtain consideration of the Article 3 claim by filing a motion to reopen with the immigration court or the Board of Immigration Appeals. In order to provide a reasonable opportunity to file such a motion, an alien who has a request for Article 3 protection pending with the Service on

the date this rule becomes effective will be granted a stay of removal effective until 30 days after the notice is served on the alien. Any motion filed by such an alien will not be subject to the normal requirements for motions to reopen. The immigration judge or the Board shall grant such a motion if it is accompanied by a copy of the notice provided by the Service or by other convincing evidence that the alien requested protection under Article 3 from the Service through the pre-regulatory administrative process and did not receive a final administrative determination prior to the effective date of this rule. The filing of such a motion shall extend the stay of removal pending the adjudication of the motion. This special provision ensures that those who requested protection under the INS pre-regulatory administrative process and did not get a ruling will have a full and fair opportunity to pursue their claims for protection under the new regulatory process.

For an alien under a removal order issued by the Service under section 238(b) of the Act or an alien under an exclusion, deportation, or removal order that has been reinstated by the Service, the Service will consider any claim to protection that is pending on the effective date of this rule through the process set out in section 208.31. For an alien ordered removed by the Service under section 235(c) of the Act, the Service will decide under section 235.8(b)(4) any Article 3 claim that is pending on the effective date of this rule. Such a claim will not be subject to the procedures set out for consideration of Article 3 claims by an immigration judge, the Board of Immigration Appeals, or an asylum officer.

Cases in Which Diplomatic Assurances Are Considered

Section 208.18(c) sets out special procedures for cases in which the Secretary of State forwards to the Attorney General assurances that the Secretary has obtained from the government of a specific country that an alien would not be tortured if returned there. In some cases, it may be possible for the United States to actually reduce the likelihood that an alien would be tortured in a particular country. The nature and reliability of such assurances, and any arrangements through which such assurances might be verified, would require careful evaluation before any decision could be reached about whether such assurances would allow an alien's removal to that country consistent with Article 3. This paragraph sets out special procedures under which the Attorney General, in consultation with the Secretary of State, will assume responsibility for assessing the adequacy of any such assurances in appropriate cases. Cases will be handled under this provision only if such assurances are actually forwarded to the Attorney General by the Secretary of State for consideration under this special process. It is anticipated that these cases will be rare.

In cases in which the Secretary has forwarded assurances under this provision, the procedures for administrative consideration of claims under the Convention Against Torture set out elsewhere in this rule will not apply. Further, the rule provides that the Attorney General's authority to make determinations about the applicability of Article 3 in such a case may be exercised by the Deputy Attorney General or by the Commissioner, but may not be further delegated. Thus the rule ensures that cases involving the adequacy of diplomatic assurances forwarded to the Attorney General by the Secretary of State will receive consideration at senior levels within the Department of Justice, which is appropriate to the delicate nature of a diplomatic undertaking to ensure that an alien is not tortured in another country. Under § 208.17(f), these special procedures may also be invoked in appropriate cases for considering whether deferral of removal should be terminated.

Cases Involving Aliens Ordered Removed Under Section 235(c) of the Act

Section 208.18(d) provides, as discussed previously in the supplementary information, that an alien ordered removed pursuant to section 235(c) of the Act will not be removed under circumstances that would violate section 241(b)(3) of the Act or Article 3 of the Convention Against Torture. Any claim by an alien for protection against removal to a country where the alien claims he or she would be tortured will be considered by the Service under the standards applicable to protection under the Convention Against Torture, in light of the special circumstances of each case.

Because these determinations will be made by the Service, the procedural provisions in Part 208 for consideration or decision of an alien's claims by an immigration judge, the Board, or an asylum officer do not apply in such cases. Thus, although this rule amends 8 CFR 253.1(f) to provide that an alien removable under section 235(c) of the Act may apply for protection under the Convention Against Torture under 8 CFR Part 208, such an alien's claim would be considered by the Service as provided in § 208.18(d), and not by an immigration judge or asylum officer.

Similarly, although § 208.2(b)(1)(C)(v) provides that an immigration judge shall have exclusive jurisdiction over any asylum application filed on or after April 1, 1997, by an alien who has been ordered removed under section 235(c) of the Act, that provision by its express terms is only applicable ''[a]fter Form I–863, Notice of Referral to Immigration Judge, has been filed with the Immigration Court.'' When the alien is found to be removable as provided in section 235(c)(2)(B) of the Act, the Service issues a removal order without referring the case to an immigration judge. Thus this provision relating to the authority of the immigration judge will apply to an alien who is subject to removal under section 235(c) of the Act only if the Service makes a determination to refer the case to an immigration judge for consideration as provided in sections 235.8(b)(2)(ii) and (d).

Expedited Removal and the Credible Fear Process

The credible fear screening provisions at § 208.30 are amended to ensure that arriving aliens who are subject to the statutory provisions for expedited removal at ports of entry will, when necessary, be considered for protection under Article 3 as well as for asylum under section 208 of the Act and withholding under section 241(b)(3)(B) of the Act. Under current procedures, an alien subject to expedited removal who expresses a fear of persecution in his or her country of origin is interviewed by an asylum officer to determine whether the alien has a credible fear of persecution. Under the amended procedures, an alien who expresses such a fear will also be examined to determine whether he or she has a credible fear of torture. An alien will be found to have a credible fear of torture if the alien shows that there is a significant possibility that he or she is eligible for withholding of removal or deferral of removal under the Convention Against Torture. If the alien has a credible fear of torture, he or she will be referred to an immigration judge for removal proceedings under section 240 of the Act, just as in the current credible fear of persecution process. In these proceedings, the alien will be able to assert a claim to withholding of removal under the Convention Against Torture or under section 241(b)(3) of the Act, or to deferral of removal in the case of an alien barred from withholding, or to asylum under section 208 of the Act. Similarly, consistent with current

procedures in the expedited removal context, upon the alien's request, an asylum officer's negative credible fear of torture determination will be subject to expeditious review by an immigration judge, with no appeal of this screening review. Thus, the interim rule provides for fair resolution of claims to protection under the Convention Against Torture in the expedited removal context, without disrupting the streamlined process established by Congress to circumvent meritless claims.

Reasonable Fear Screening Process for Aliens in Administrative Removal Proceedings for Aggravated Felons and Aliens Subject to Reinstated Orders

Section 208.31 creates a new screening process to evaluate torture claims for aliens subject to streamlined administrative removal processes for aggravated felons under section 238(b) of the Act and for aliens subject to reinstatement of a previous removal order under section 241(a)(5) of the Act. This new screening process is modeled on the credible fear screening process, but requires the alien to meet a higher screening standard. Similar to the credible fear screening process, § 208.31 is intended to provide for the fair resolution of claims both to withholding under section 241(b)(3) of the Act, and to protection under the Convention Against Torture without unduly disrupting the operation of these special administrative removal processes.

Unlike the broad class of arriving aliens who are subject to expedited removal, these two classes of aliens are ineligible for asylum. They may, however, be entitled to withholding of removal under either section 241(b)(3) of the Act, or under the Convention Against Torture, or to deferral of removal under § 208.17(a). Because the standard for showing entitlement to these forms of protection (a probability of persecution or torture) is significantly higher than the standard for asylum (a well-founded fear of persecution), the screening standard adopted for initial consideration of withholding and deferral requests in these contexts is also higher. In fact, the ''reasonable fear'' screening standard is the same standard of proof used in asylum eligibility determinations. That is, the alien must show that there is a ''reasonable possibility'' that he or she would be persecuted or tortured in the country of removal.

Under the new screening process, aliens in these streamlined administrative removal proceedings who express a fear of persecution or torture will be interviewed by an asylum officer to determine whether they have a reasonable fear of persecution or torture. If they are determined to have such a fear, they will be referred to an immigration judge for a determination only as to their eligibility for withholding of removal under either section 241(b)(3) of the Act or under the Convention Against Torture, or for deferral of removal. Either the alien or the Service may appeal the immigration judge's decision about eligibility for withholding or deferral of removal to the Board of Immigration Appeals. The Board will have jurisdiction to review only the issue of eligibility for withholding or deferral of removal and may not review issues related to the administratively issued order of removal or to the reinstatement of the previous order of removal.

If the asylum officer determines that the alien does not have a reasonable fear of persecution or torture, the alien will be afforded the opportunity for an expeditious review of the negative screening determination by an immigration judge. A new form I–898, Record of Negative Reasonable Fear Finding and Request for Review by the Immigration Judge, will be created on which the alien may request review of a negative asylum officer screening determination. If the immigration judge upholds the negative screening determination, the alien may be removed without further review. If the immigration judge reverses the asylum officer's screening determination, however, the immigration judge will proceed to a determination only as to eligibility for withholding of removal under section 241(b)(3) of the Act or under the Convention Against Torture, or if applicable, deferral of removal. Again, either the alien or the INS may appeal the immigration judge's decision about withholding or deferral to the Board of Immigration Appeals.

This reasonable fear screening process provides a formal mechanism, previously unavailable, to make determinations under section 241(b)(3) of the Act for aliens who are subject to administrative removal as aggravated felons under section 238(b) of the Act, but who were sentenced to an aggregate term of imprisonment of less than five years, and thus are not conclusively barred from withholding under section 241(b)(3)(B) of the Act. This same mechanism will provide for consideration of applications for withholding of removal under the Convention Against Torture, and for consideration for deferral of removal when necessary, in these cases. Thus the new screening process will unify any consideration of applications for withholding of removal under section 241(b)(3) of the Act and under the Convention Against Torture in these cases.

Similarly, the new reasonable fear of persecution or torture screening process will ensure proper consideration of applications for withholding under section 241(b)(3) of the Act and under the Convention Against Torture, and of deferral of removal when appropriate, in cases subject to reinstatement of a previous removal order. Thus it replaces current regulatory provisions at § 241.8(d) for the consideration of applications for withholding of removal under section 241(b)(3) of the Act.

Form I–589 as application form for withholding of removal under the Convention Against Torture

The Form I–589, Application for Asylum and for Withholding of Removal, will serve as an application form for withholding of removal under the Convention Against Torture, as well as for withholding of removal under section 241(b)(3) of the Act. Supplemental instructions for the Form I–598 will be issued to explain how an alien may use this form to seek withholding of removal under the Convention. Under this rule, consideration for deferral of removal must be undertaken when an alien's application for withholding has been denied because of a bar to withholding. Therefore, the Form I–589 will automatically trigger deferral of removal where appropriate.

Use of the Form I–589 will avoid confusion by allowing aliens who believe they are at risk of harm to apply for asylum, as well as these other risk-based forms of protection, at the same time, using the same form. It will also help to ensure that these claims are presented at one time, thereby allowing resolution of these issues in the normal course of proceedings.

Additionally, use of the Form I–589 will obviate the need for two separate forms that, in many cases, will elicit similar information. In many cases in which the alien applies both for asylum and withholding of removal under the Act and for withholding under the Convention Against Torture, the underlying facts supporting these claims will be the same. Thus use of the I–589 will reduce the burden on the applicant while also simplifying the adjudication process for the Service and EOIR. In all cases, the same biographical background information will be necessary. Additionally, the Form I–589 already contains questions that would elicit the facts underlying an alien's fear of torture as well as his or her fear of persecution.

For example, the form specifically asks the applicant whether he or she fears torture upon return to a country, and also asks open-ended questions designed to elicit any information about past mistreatment or fear of mistreatment in the future. Thus the existing form can easily be used for the adjudication of claims to protection under the Convention Against Torture.

Good Cause Exception

The interim rule is effective 30 days from the date of publication in the **Federal Register**, although the Department invites public comment for 60 days from the date of publication. For the following reasons, the Department finds that good cause exists under 5 U.S.C. 553(b)(B) and (d)(3) for implementing this rule as an interim rule without the prior notice and comment period ordinarily required under that provision. First, section 2242(b) of the Foreign Affairs Reform and Restructuring Act of 1998 requires that ''[n]ot later than 120 days after the date of the enactment of this Act, the heads of the appropriate agencies shall prescribe regulations to implement the obligations of the United States under Article 3 of the [Convention Against Torture].'' In order to comply with this statutory requirement, it was necessary to dispense with the usual period of public notice and comment; however, the Department will consider carefully all public comments submitted in the course of preparation of a final rule. Second, this rule provides a formal mechanism for requesting protection from torture, and must be implemented expeditiously in order to allow aliens who may require protection under the Convention Against Torture to seek such protection under a regulatory system. While the current informal procedure will remain in place during the next 30 days, it allows for consideration of such requests only at the end of the removal process, after all other avenues of appeal have been exhausted. The interim rule will permit most aliens to raise their claims during the course of regular removal proceedings, and thus many individuals currently in proceedings before the immigration court will have the opportunity to have their request for protection resolved more expeditiously than under the current informal procedure. Therefore, early implementation will be advantageous to those persons seeking protection under the Convention Against Torture, and it is contrary to the intent of the statute and the public interest to delay the implementation of this rule until after a notice and comment period.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because of the following reason: This rule involves the process for adjudication of certain requests for withholding of removal. This process affects individuals and not small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one-year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the Provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under Executive Order 12866, Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

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

Executive Order 12988—Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The information collection requirement contained in this rule has been approved for use by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR part 299.5, Display of control numbers.

List of Subjects

8 CFR Part 3

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

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 238

Air Carriers, Aliens, Government contracts, Maritime carriers.

8 CFR Part 240

Administrative practice and procedure, Immigration.

8 CFR Part 241

Aliens, Immigration.

8 CFR Part 253

Air carriers, Airmen, Aliens, Maritime carriers, Reporting and recordkeeping requirements, Seamen.

8 CFR Part 507

Aliens, Terrorists.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100.

2. In § 3.23, revise the paragraph heading and the first sentence in paragraph (b)(4)(i) to read as follows:

§ 3.23 Reopening or Reconsideration before the Immigration Court.

* * * * *

(b) * * *

(4) * * *

(i) *Asylum and withholding of removal.* The time and numerical limitations set forth in paragraph (b)(1) of this section shall not apply if the basis of the motion is to apply for asylum under section 208 of the Act or withholding of removal under section 241(b)(3) of the Act or withholding of removal under the Convention Against Torture, and is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous proceeding. * * *

3. In § 3.42, revise paragraphs (d) and (f) to read as follows:

§ 3.42 Review of credible fear determination.

* * * * *

(d) *Standard of review.* The immigration judge shall make a *de novo* determination as to whether there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the immigration judge, that the alien could establish eligibility for asylum under section 208 of the Act or withholding under section 241(b)(3) of the Act or withholding under the Convention Against Torture.

* * * * *

(f) *Decision.* If an immigration judge determines that an alien has a credible fear of persecution or torture, the immigration judge shall vacate the order entered pursuant to section 235(b)(1)(B)(iii)(I) of the Act. Subsequent to the order being vacated, the Service shall issue and file Form I–862, Notice to Appear, with the Immigration Court to commence removal proceedings. The alien shall have the opportunity to apply for asylum and withholding of removal in the course of removal proceedings pursuant to section 240 of the Act. If an immigration judge determines that an alien does not have a credible fear of persecution or torture, the immigration judge shall affirm the asylum officer's determination and remand the case to the Service for execution of the removal order entered pursuant to section 235(b)(1)(B)(iii)(I) of the Act. No appeal shall lie from a review of an adverse credible fear determination made by an immigration judge.

* * * * *

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

4. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557; 3 CFR, 1982 Comp., p 166; 8 CFR part 2.

5. In § 103.12, revise paragraph (a)(5) to read as follows:

§ 103.12 Definition of the term ''lawfully present'' aliens for purposes of applying for Title II social security benefits under Public Law 104–193.

(a) * * *

(5) Applicants for asylum under section 208(a) of the Act and applicants for withholding of removal under section 241(b)(3) of the Act or under the Convention Against Torture who have been granted employment authorization, and such applicants under the age of 14 who have had an application pending for at least 180 days.

* * * * *

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

6. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

7. Revise § 208.1 to read as follows:

§ 208.1 General.

(a) *Applicability.* Unless otherwise provided in this chapter, this subpart shall apply to all applications for asylum under section 208 of the Act or for withholding of deportation or withholding of removal under section 241(b)(3) of the Act, or under the Convention Against Torture, whether before an asylum officer or an immigration judge, regardless of the date of filing. For purposes of this chapter, withholding of removal shall also mean withholding of deportation under section 243(h) of the Act, as it appeared prior to April 1, 1997, except as provided in § 208.16(d). Such applications are hereinafter referred to as ''asylum applications.'' The provisions of this part shall not affect the finality or validity of any decision made by a district director, an immigration judge, or the Board of Immigration Appeals in any such case prior to April 1, 1997. No asylum application that was filed with a district director, asylum officer, or immigration judge prior to April 1, 1997, may be reopened or otherwise reconsidered under the provisions of this part except by motion granted in the exercise of discretion by the Board of Immigration Appeals, an immigration judge, or an asylum officer for proper cause shown. Motions to reopen or reconsider must meet the requirements of sections 240(c)(5) and (c)(6) of the Act, and 8 CFR parts 3 and 103, where applicable.

(b) *Training of asylum officers.* The Director of International Affairs shall ensure that asylum officers receive special training in international human rights law, nonadversarial interview techniques, and other relevant national and international refugee laws and principles. The Director of International Affairs shall also, in cooperation with the Department of State and other appropriate sources, compile and disseminate to asylum officers information concerning the persecution of persons in other countries on account of race, religion, nationality, membership in a particular social group, or political opinion, torture of persons in other countries, and other information relevant to asylum determinations, and shall maintain a documentation center with information on human rights conditions.

8. In § 208.2, revise paragraphs (a), (b)(1)(ii), and (b)(3), to read as follows:

§ 208.2 Jurisdiction.

(a) *Office of International Affairs.* Except as provided in paragraph (b) of this section, the Office of International Affairs shall have initial jurisdiction over an asylum application filed by, or a credible fear determination pertaining to, an alien physically present in the United States or seeking admission at a port-of-entry. The Office of International Affairs shall also have initial jurisdiction to consider applications for withholding of removal under § 208.31. An application that is complete within the meaning of § 208.3(c)(3) shall either be adjudicated or referred by asylum officers under this part in accordance with § 208.14. An application that is incomplete within the meaning of § 208.3(c)(3) shall be returned to the applicant.

(b) * * *

(1) * * *

(ii) An alien stowaway who has been found to have a credible fear of

persecution or torture pursuant to the procedures set forth in subpart B of this part;

* * * * *

(3) *Other aliens.* Immigration judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served Form I–221, Order to Show Cause; Form I–122, Notice to Applicant for Admission Detained for a Hearing before an Immigration Judge; or Form I–862, Notice to Appear, after a copy of the charging document has been filed with the Immigration Court. Immigration judges shall also have jurisdiction over any asylum applications filed prior to April 1, 1997, by alien crewmembers who have remained in the United States longer than authorized, by applicants for admission under the Visa Waiver Pilot Program, and by aliens who have been admitted to the United States under the Visa Waiver Pilot Program. Immigration judges shall also have the authority to review reasonable fear determinations referred to the Executive Office for Immigration Review under § 208.31.

9. In § 208.4, revise paragraph (a) introductory text and paragraph (b)(2) to read as follows:

§ 208.4 Filing the application.

* * * * *

(a) *Prohibitions on filing.* Section 208(a)(2) of the Act prohibits certain aliens from filing for asylum on or after April 1, 1997, unless the alien can demonstrate to the satisfaction of the Attorney General that one of the exceptions in section 208(a)(2)(D) of the Act applies. Such prohibition applies only to asylum applications under section 208 of the Act and not to applications for withholding of removal under § 208.16 of this part. If an applicant submits an asylum application and it appears that one or more of the prohibitions contained in section 208(a)(2) of the Act apply, an asylum officer or an immigration judge shall review the application to determine if the application should be rejected or denied. For the purpose of making determinations under section 208(a)(2) of the Act, the following rules shall apply:

* * * * *

(b) * * *

(2) *With the asylum office.* Asylum applications shall be filed directly with the asylum office having jurisdiction over the matter in the case of an alien who has received the express consent of the Director of Asylum to do so or in the case of an alien whose case has been referred to the asylum office for purposes of conducting a reasonable fear determination under § 208.31 of this part.

* * * * *

10. In § 208.5, revise paragraph (b)(1) introductory text to read as follows:

§ 208.5 Special duties toward aliens in custody of the Service.

* * * * *

(b) * * *

(1) If an alien crewmember or alien stowaway on board a vessel or other conveyance alleges, claims, or otherwise makes known to an immigration inspector or other official making an examination on the conveyance that he or she is unable or unwilling to return to his or her country of nationality or last habitual residence (if not a national of any country) because of persecution or a fear of persecution in that country on account of race, religion, nationality, membership in a particular social group, or political opinion, or if the alien expresses a fear of torture upon return to that country, the alien shall be promptly removed from the conveyance. If the alien makes such fear known to an official while off such conveyance, the alien shall not be returned to the conveyance but shall be retained in or transferred to the custody of the Service.

* * * * *

11. In § 208.11, revise paragraph (b)(2) to read as follows:

§ 208.11 Comments from the Department of State.

* * * * *

(b) * * *

(2) Information about whether persons who are similarly situated to the applicant are persecuted or tortured in his or her country of nationality or habitual residence and the frequency of such persecution or torture; or

* * * * *

12. In § 208.12, revise paragraph (a) to read as follows:

§ 208.12 Reliance on information compiled by other sources.

(a) In deciding an asylum application, or in deciding whether the alien has a credible fear of persecution or torture pursuant to § 208.30 of this part, or a reasonable fear of persecution or torture pursuant to § 208.31, the asylum officer may rely on material provided by the Department of State, the Office of International Affairs, other Service offices, or other credible sources, such as international organizations, private voluntary agencies, news organizations, or academic institutions.

* * * * *

13. Section 208.13 revise paragraph (c)(1) to read as follows:

§ 208.13 Establishing asylum eligibility.

* * * * *

(c) * * *

(1) *Applications filed on or after April 1, 1997.* For applications filed on or after April 1, 1997, an applicant shall not qualify for asylum if section 208(a)(2) or 208(b)(2) of the Act applies to the applicant. If the applicant is found to be ineligible for asylum under either section 208(a)(2) or 208(b)(2) of the Act, the applicant shall be considered for eligibility for withholding of removal under section 241(b)(3) of the Act. The applicant shall also be considered for eligibility for withholding of removal under the Convention Against Torture if the applicant requests such consideration or if the evidence presented by the alien indicates that the alien may be tortured in the country of removal.

14. Section 208.16 is amended as follows:

A. Revise the section heading;

B. Revise paragraph (a);

C. Revise paragraph (b) introductory test;

D. Redesignate paragraphs (c) and (d), as (d) and (e) respectively;

E. Add a new paragraph (c);

F. Revise newly redesignated paragraphs (d) and (e); and

G. Add a new paragraph (f) to read as follows:

§ 208.16 Withholding of removal under section 241(b)(3)(B) of the Act and withholding of removal under the Convention Against Torture.

(a) *Consideration of application for withholding of removal.* An asylum officer shall not decide whether the exclusion, deportation, or removal of an alien to a country where the alien's life or freedom would be threatened must be withheld, except in the case of an alien who is otherwise eligible for asylum but is precluded from being granted such status due solely to section 207(a)(5) of the Act. In exclusion, deportation, or removal proceedings, an immigration judge may adjudicate both an asylum claim and a request for withholding of removal whether or not asylum is granted.

(b) *Eligibility for withholding of removal under section 241(b)(3) of the Act; burden of proof.* The burden of proof is on the applicant for withholding of removal under section 241(b)(3) of the Act to establish that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion. The testimony of the applicant, if credible, may be sufficient to sustain the burden

of proof without corroboration. The evidence shall be evaluated as follows:

* * * * *

(c) *Eligibility for withholding of removal under the Convention Against Torture.*

(1) For purposes of regulations under Title II of the Act, ''Convention Against Torture'' shall refer to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention, as implemented by section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (Pub. L. 105–277, 112 Stat. 2681, 2681–821). The definition of torture contained in § 208.18(a) of this part shall govern all decisions made under regulations under Title II of the Act about the applicability of Article 3 of the Convention Against Torture.

(2) The burden of proof is on the applicant for withholding of removal under this paragraph to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration.

(3) In assessing whether it is more likely than not that an applicant would be tortured in the proposed country of removal, all evidence relevant to the possibility of future torture shall be considered, including, but not limited to:

(i) Evidence of past torture inflicted upon the applicant;

(ii) Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured;

(iii) Evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and

(iv) Other relevant information regarding conditions in the country of removal.

(4) In considering an application for withholding of removal under the Convention Against Torture, the immigration judge shall first determine whether the alien is more likely than not to be tortured in the country of removal. If the immigration judge determines that the alien is more likely than not to be tortured in the country of removal, the alien is entitled to protection under the Convention Against Torture. Protection under the Convention Against Torture will be granted either in the form of withholding of removal or in the form of deferral of removal. An alien entitled to such protection shall be granted withholding of removal unless the alien is subject to mandatory denial of withholding of removal under paragraphs (d)(2) or (d)(3) of this section. If an alien entitled to such protection is subject to mandatory denial of withholding of removal under paragraphs (d)(2) or (d)(3) of this section, the alien's removal shall be deferred under § 208.17(a).

(d) *Approval or denial of application.* (1) *General.* Subject to paragraphs (d)(2) and (d)(3) of this section, an application for withholding of deportation or removal to a country of proposed removal shall be granted if the applicant's eligibility for withholding is established pursuant to paragraphs (b) or (c) of this section.

(2) *Mandatory denials.* Except as provided in paragraph (d)(3) of this section, an application for withholding of removal under section 241(b)(3) of the Act or under the Convention Against Torture shall be denied if the applicant falls within section 241(b)(3)(B) of the Act or, for applications for withholding of deportation adjudicated in proceedings commenced prior to April 1, 1997, within section 243(h)(2) of the Act as it appeared prior to that date. For purposes of section 241(b)(3)(B)(ii) of the Act, or section 243(h)(2)(B) of the Act as it appeared prior to April 1, 1997, an alien who has been convicted of a particularly serious crime shall be considered to constitute a danger to the community. If the evidence indicates the applicability of one or more of the grounds for denial of withholding enumerated in the Act, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(3) *Exception to the prohibition on withholding of deportation in certain cases.* Section 243(h)(3) of the Act, as added by section 413 of Pub. L. 104–132 (110 Stat. 1214), shall apply only to applications adjudicated in proceedings commenced before April 1, 1997, and in which final action had not been taken before April 24, 1996. The discretion permitted by that section to override section 243(h)(2) of the Act shall be exercised only in the case of an applicant convicted of an aggravated felony (or felonies) where he or she was sentenced to an aggregate term of imprisonment of less than 5 years and the immigration judge determines on an individual basis that the crime (or crimes) of which the applicant was convicted does not constitute a particularly serious crime. Nevertheless, it shall be presumed that an alien convicted of an aggravated felony has been convicted of a particularly serious crime. Except in the cases specified in this paragraph, the grounds for denial of withholding of deportation in section 243(h)(2) of the Act as it appeared prior to April 1, 1997, shall be deemed to comply with the Protocol Relating to the Status of Refugees, Jan. 31, 1967, T.I.A.S. No. 6577.

(e) *Reconsideration of discretionary denial of asylum.* In the event that an applicant is denied asylum solely in the exercise of discretion, and the applicant is subsequently granted withholding of deportation or removal under this section, thereby effectively precluding admission of the applicant's spouse or minor children following to join him or her, the denial of asylum shall be reconsidered. Factors to be considered will include the reasons for the denial and reasonable alternatives available to the applicant such as reunification with his or her spouse or minor children in a third country.

(f) *Removal to third country.* Nothing in this section or § 208.17 shall prevent the Service from removing an alien to a third country other than the country to which removal has been withheld or deferred.

15. Section 208.17 is revised to read as follows:

§ 208.17 Deferral of removal under the Convention Against Torture.

(a) *Grant of deferral of removal.* An alien who: has been ordered removed; has been found under § 208.16(c)(3) to be entitled to protection under the Convention Against Torture; and is subject to the provisions for mandatory denial of withholding of removal under § 208.16(d)(2) or (d)(3), shall be granted deferral of removal to the country where he or she is more likely than not to be tortured.

(b) *Notice to Alien.* (1) After an immigration judge orders an alien described in paragraph (a) of this section removed, the immigration judge shall inform the alien that his or her removal to the country where he or she is more likely than not to be tortured shall be deferred until such time as the deferral is terminated under this section. The immigration judge shall inform the alien that deferral of removal:

(i) Does not confer upon the alien any lawful or permanent immigration status in the United States;

(ii) Will not necessarily result in the alien being released from the custody of the Service if the alien is subject to such custody;

(iii) Is effective only until terminated; and

(iv) Is subject to review and termination if the immigration judge determines that it is not likely that the alien would be tortured in the country to which removal has been deferred, or if the alien requests that deferral be terminated.

(2) The immigration judge shall also inform the alien that removal has been deferred only to the country in which it has been determined that the alien is likely to be tortured, and that the alien may be removed at any time to another country where he or she is not likely to be tortured.

(c) *Detention of an alien granted deferral of removal under this section.* Nothing in this section shall alter the authority of the Service to detain an alien whose removal has been deferred under this section and who is otherwise subject to detention. In the case of such an alien, decisions about the alien's release shall be made according to part 241 of this chapter.

(d) *Termination of deferral of removal.*

(1) At any time while deferral of removal is in effect, the INS District Counsel for the District with jurisdiction over an alien whose removal has been deferred under paragraph (a) of this section may file a motion with the Immigration Court having administrative control pursuant to § 3.11 of this chapter to schedule a hearing to consider whether deferral of removal should be terminated. The Service motion shall be granted if it is accompanied by evidence that is relevant to the possibility that the alien would be tortured in the country to which removal has been deferred and that was not presented at the previous hearing. The Service motion shall not be subject to the requirements for reopening in §§ 3.2 and 3.23 of this chapter.

(2) The Immigration Court shall provide notice to the alien and the Service of the time, place, and date of the termination hearing. Such notice shall inform the alien that the alien may supplement the information in his or her initial application for withholding of removal under the Convention Against Torture and shall provide that the alien must submit any such supplemental information within 10 calendar days of service of such notice (or 13 calendar days if service of such notice was by mail). At the expiration of this 10 or 13 day period, the Immigration Court shall forward a copy of the original application, and any supplemental information the alien or the Service has submitted, to the Department of State, together with notice to the Department of State of the time, place and date of the termination hearing. At its option, the Department of State may provide comments on the case, according to the provisions of § 208.11 of this part.

(3) The immigration judge shall conduct a hearing and make a *de novo* determination, based on the record of proceeding and initial application in addition to any new evidence submitted by the Service or the alien, as to whether the alien is more likely than not to be tortured in the country to which removal has been deferred. This determination shall be made under the standards for eligibility set out in § 208.16(c). The burden is on the alien to establish that it is more likely than not that he or she would be tortured in the country to which removal has been deferred.

(4) If the immigration judge determines that the alien is more likely than not to be tortured in the country to which removal has been deferred, the order of deferral shall remain in place. If the immigration judge determines that the alien has not established that he or she is more likely than not to be tortured in the country to which removal has been deferred, the deferral of removal shall be terminated and the alien may be removed to that country. Appeal of the immigration judge's decision shall lie to the Board.

(e) *Termination at the request of the alien.*

(1) At any time while deferral of removal is in effect, the alien may make a written request to the Immigration Court having administrative control pursuant to § 3.11 of this chapter to terminate the deferral order. If satisfied on the basis of the written submission that the alien's request is knowing and voluntary, the immigration judge shall terminate the order of deferral and the alien may be removed.

(2) If necessary the immigration judge may calendar a hearing for the sole purpose of determining whether the alien's request is knowing and voluntary. If the immigration judge determines that the alien's request is knowing and voluntary, the order of deferral shall be terminated. If the immigration judge determines that the alien's request is not knowing and voluntary, the alien's request shall not serve as the basis for terminating the order of deferral.

(f) *Termination pursuant to § 208.18(c).* At any time while deferral of removal is in effect, the Attorney General may determine whether deferral should be terminated based on diplomatic assurances forwarded by the Secretary of State pursuant to the procedures in § 208.18(c).

§§ 208.18 through 208.22 [Redesignated as §§ 208.19 through 208.23]

16. Sections 208.18 through 208.22 are redesignated as §§ 208.19 through 208.23 respectively.

17. Section 208.18 is added to read as follows:

§ 208.18 Implementation of the Convention Against Torture.

(a) *Definitions.* The definitions in this subsection incorporate the definition of torture contained in Article 1 of the Convention Against Torture, subject to the reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention.

(1) Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

(2) Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture.

(3) Torture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Lawful sanctions include judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty, but do not include sanctions that defeat the object and purpose of the Convention Against Torture to prohibit torture.

(4) In order to constitute torture, mental pain or suffering must be prolonged mental harm caused by or resulting from:

(i) The intentional infliction or threatened infliction of severe physical pain or suffering;

(ii) The administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(iii) The threat of imminent death; or

(iv) The threat that another person will imminently be subjected to death,

severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the sense or personality.

(5) In order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering. An act that results in unanticipated or unintended severity of pain and suffering is not torture.

(6) In order to constitute torture an act must be directed against a person in the offender's custody or physical control.

(7) Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.

(8) Noncompliance with applicable legal procedural standards does not *per se* constitute torture.

(b) *Applicability of §§ 208.16(c) and 208.17(a).*

(1) *Aliens in proceedings on or after March 22, 1999.* An alien who is in exclusion, deportation, or removal proceedings on or after March 22, 1999 may apply for withholding of removal under § 208.16(c), and, if applicable, may be considered for deferral of removal under § 208.17(a).

(2) *Aliens who were ordered removed, or whose removal orders became final, before March 22, 1999.* An alien under a final order of deportation, exclusion, or removal that became final prior to March 22, 1999 may move to reopen proceedings to seek protection under § 208.16(c). Such motions shall be governed by §§ 3.23 and 3.2 of this chapter, except that the time and numerical limitations on motions to reopen shall not apply and the alien shall not be required to demonstrate that the evidence sought to be offered was unavailable and could not have been discovered or presented at the former hearing. The motion to reopen shall not be granted unless:

(i) The motion is filed within June 21, 1999; and

(ii) The evidence sought to be offered establishes a prima facie case that the applicant's removal must be withheld or deferred under §§ 208.16(c) or 208.17(a).

(3) *Aliens who, on March 22, 1999, have requests pending with the Service for protection under Article 3 of the Convention Against Torture.*

(i) Except as otherwise provided, after March 22, 1999, the Service will not:

(A) Consider, under its pre-regulatory administrative policy to ensure compliance with the Convention Against Torture, whether Article 3 of that Convention prohibits the removal of an alien to a particular country, or

(B) Stay the removal of an alien based on a request filed with the Service for protection under Article 3 of that Convention.

(ii) For each alien who, on or before March 22, 1999, filed a request with the Service for protection under Article 3 of the Convention Against Torture, and whose request has not been finally decided by the Service, the Service shall provide written notice that, after March 22, 1999, consideration for protection under Article 3 can be obtained only through the provisions of this rule.

(A) The notice shall inform an alien who is under an order of removal issued by EOIR that, in order to seek consideration of a claim under §§ 208.16(c) or 208.17(a), such an alien must file a motion to reopen with the immigration court or the Board of Immigration Appeals. This notice shall be accompanied by a stay of removal, effective until 30 days after service of the notice on the alien. A motion to reopen filed under this paragraph for the limited purpose of asserting a claim under §§ 208.16(c) or 208.17(a) shall not be subject to the requirements for reopening in §§ 3.2 and 3.23 of this chapter. Such a motion shall be granted if it is accompanied by a copy of the notice described in paragraph (b)(3)(ii) or by other convincing evidence that the alien had a request pending with the Service for protection under Article 3 of the Convention Against Torture on March 22, 1999. The filing of such a motion shall extend the stay of removal during the pendency of the adjudication of this motion.

(B) The notice shall inform an alien who is under an administrative order of removal issued by the Service under section 238(b) of the Act or an exclusion, deportation, or removal order reinstated by the Service under section 241(a)(5) of the Act that the alien's claim to withholding of removal under § 208.16(c) or deferral of removal under § 208.17(a) will be considered under § 208.31.

(C) The notice shall inform an alien who is under an administrative order of removal issued by the Service under section 235(c) of the Act that the alien's claim to protection under the Convention Against Torture will be decided by the Service as provided in § 208.18(d) and 235.8(b)(4) and will not be considered under the provisions of this part relating to consideration or review by an immigration judge, the Board of Immigration Appeals, or an asylum officer.

(4) *Aliens whose claims to protection under the Convention Against Torture were finally decided by the Service prior to March 22, 1999.* Sections 208.16(c) and 208.17 (a) and paragraphs (b)(1) through (b)(3) of this section do not apply to cases in which, prior to March 22, 1999, the Service has made a final administrative determination about the applicability of Article 3 of the Convention Against Torture to the case of an alien who filed a request with the Service for protection under Article 3. If, prior to March 22, 1999, the Service determined that an applicant cannot be removed consistent with the Convention Against Torture, the alien shall be considered to have been granted withholding of removal under § 208.16(c), unless the alien is subject to mandatory denial of withholding of removal under § 208.16(d)(2) or (d)(3), in which case the alien will be considered to have been granted deferral of removal under 208.17(a). If, prior to March 22, 1999, the Service determined that an alien can be removed consistent with the Convention Against Torture, the alien will be considered to have been finally denied withholding of removal under § 208.16(c) and deferral of removal under § 208.17(a).

(c) *Diplomatic assurances against torture obtained by the Secretary of State.*

(1) The Secretary of State may forward to the Attorney General assurances that the Secretary has obtained from the government of a specific country that an alien would not be tortured there if the alien were removed to that country.

(2) If the Secretary of State forwards assurances described in paragraph (c)(1) of this section to the Attorney General for consideration by the Attorney General or her delegates under this paragraph, the Attorney General shall determine, in consultation with the Secretary of State, whether the assurances are sufficiently reliable to allow the alien's removal to that country consistent with Article 3 of the Convention Against Torture. The Attorney General's authority under this paragraph may be exercised by the Deputy Attorney General or by the Commissioner, Immigration and Naturalization Service, but may not be further delegated.

(3) Once assurances are provided under paragraph (c)(2) of this section, the alien's claim for protection under the Convention Against Torture shall not be considered further by an immigration judge, the Board of Immigration Appeals, or an asylum officer.

(d) *Cases involving aliens ordered removed under section 235(c) of the Act.* With respect to an alien terrorist or other alien subject to administrative

removal under section 235(c) of the Act who requests protection under Article 3 of the Convention Against Torture, the Service will assess the applicability of Article 3 through the removal process to ensure that a removal order will not be executed under circumstances that would violate the obligations of the United States under Article 3. In such cases, the provisions of Part 208 relating to consideration or review by an immigration judge, the Board of Immigration Appeals, or an asylum officer shall not apply.

(e) *Judicial review of claims for protection from removal under Article 3 of the Convention Against Torture.*

(1) Pursuant to the provisions of section 2242(d) of the Foreign Affairs Reform and Restructuring Act of 1998, there shall be no judicial appeal or review of any action, decision, or claim raised under the Convention or that section, except as part of the review of a final order of removal pursuant to section 242 of the Act; provided however, that any appeal or petition regarding an action, decision, or claim under the Convention or under section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 shall not be deemed to include or authorize the consideration of any administrative order or decision, or portion thereof, the appeal or review of which is restricted or prohibited by the Act.

(2) Except as otherwise expressly provided, nothing in this paragraph shall be construed to create a private right of action or to authorize the consideration or issuance of administrative or judicial relief.

18. Newly redesignated 208.19 is revised to read as follows:

§ 208.19 Determining if an asylum application is frivolous.

For applications filed on or after April 1, 1997, an applicant is subject to the provisions of section 208(d)(6) of the Act only if a final order by an immigration judge or the Board of Immigration Appeals specifically finds that the alien knowingly filed a frivolous asylum application. For purposes of this section, an asylum application is frivolous if any of its material elements is deliberately fabricated. Such finding shall only be made if the immigration judge or the Board is satisfied that the applicant, during the course of the proceedings, has had sufficient opportunity to account for any discrepancies or implausible aspects of the claim. For purposes of this section, a finding that an alien filed a frivolous asylum application shall not preclude the alien from seeking withholding of removal.

19. Newly redesignated § 208.21 is revised to read as follows:

§ 208.21 Effect on exclusion, deportation, and removal proceedings.

(a) An alien who has been granted asylum may not be deported or removed unless his or her asylum status is terminated pursuant to § 208.23 of this part. An alien in exclusion, deportation, or removal proceedings who is granted withholding of removal or deportation or deferral of removal may not be deported or removed to the country to which his or her deportation or removal is ordered withheld or deferred unless the withholding order is terminated pursuant to § 208.23 or deferral is terminated pursuant to § 208.17(d) or (e).

(b) When an alien's asylum status or withholding of removal or deportation is terminated under this part, the Service shall initiate removal proceedings under section 235 or 240 of the Act, as appropriate, if the alien is not already in exclusion, deportation, or removal proceedings or subject to a final order of removal. Removal proceedings may also be in conjunction with a termination hearing scheduled under § 208.23(e).

20. Section 208.30 is amended by:

A. Revising paragraphs (b), (d) and (e); and by

B. Revising paragraphs (f)(1), and (f)(2), and (f)(3), to read as follows:

§ 208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

* * * * *

(b) *Interview and procedure.* The asylum officer, as defined in section 235(b)(1)(E) of the Act, will conduct the interview in a nonadversarial manner, separate and apart from the general public. At the time of the interview, the asylum officer shall verify that the alien has received Form M–444, Information about Credible Fear Interview in Expedited Removal Cases. The officer shall also determine that the alien has an understanding of the credible fear determination process. The alien may be required to register his or her identity electronically or through any other means designated by the Attorney General. The alien may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, and may present other evidence, if available. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process. Any person or persons with whom the alien chooses to consult may be present at the interview and may be permitted, in the discretion of the asylum officer, to present a statement at the end of the interview. The asylum officer, in his or her discretion, may place reasonable limits on the number of such persons who may be present at the interview and on the length of statement or statements made. If the alien is unable to proceed effectively in English, and if the asylum officer is unable to proceed competently in a language chosen by the alien, the asylum officer shall arrange for the assistance of an interpreter in conducting the interview. The interpreter may not be a representative or employee of the applicant's country of nationality or, if the applicant is stateless, the applicant's country of last habitual residence. The asylum officer shall create a summary of the material facts as stated by the applicant. At the conclusion of the interview, the officer shall review the summary with the alien and provide the alien with an opportunity to correct errors therein. The asylum officer shall create a written record of his or her determination, including a summary of the material facts as stated by the applicant, any additional facts relied on by the officer, and the officer's determination of whether, in light of such facts, the alien has established a credible fear of persecution or torture. The decision shall not become final until reviewed by a supervisory asylum officer.

* * * * *

(d) *Referral for an asylum hearing.* If an alien, other than an alien stowaway, is found to have a credible fear of persecution or torture, the asylum officer will so inform the alien and issue a Form I–862, Notice to Appear, for full consideration of the asylum and withholding of removal claim in proceedings under section 240 of the Act. Parole of the alien may only be considered in accordance with section 212(d)(5) of the Act and § 212.5 of this chapter. If an alien stowaway is found to have a credible fear of persecution or torture, the asylum officer will so inform the alien and issue a Form I–863, Notice to Referral to Immigration Judge, for full consideration of the asylum and withholding of removal claim in proceedings under § 208.2(b)(1).

(e) *Removal of aliens with no credible fear of persecution or torture.* If an alien is found not to have a credible fear of persecution or torture, the asylum officer shall provide the alien with a written notice of decision and inquire whether the alien wishes to have an immigration judge review the negative decision, using Form I–869, Record of Negative Credible Fear Finding and

Request for Review by Immigration Judge, on which the alien shall indicate whether he or she desires such review. If the alien is not a stowaway, the officer shall also order the alien removed and issue a Form I–860, Notice and Order of Expedited Removal. If the alien is a stowaway and the alien does not request a review by an immigration judge, the asylum officer shall also refer the alien to the district director for completion of removal proceedings in accordance with section 235(a)(2) of the Act.

(f) * * *

(1) If the immigration judge concurs with the determination of the asylum officer that the alien does not have a credible fear of persecution or torture, the case shall be returned to the Service for removal of the alien. The immigration judge's decision is final and may not be appealed.

(2) If the immigration judge finds that the alien, other than an alien stowaway, possesses a credible fear of persecution or torture, the immigration judge shall vacate the order of the asylum officer issued on Form I–860 and the Service may commence removal proceedings under section 240 of the Act, during which time the alien may file an application for asylum and withholding of removal in accordance with § 208.4(b)(3)(i).

(3) If the immigration judge finds that an alien stowaway possesses a credible fear of persecution or torture, the alien shall be allowed to file an application for asylum and withholding of removal before the immigration judge in accordance with § 208.4(b)(3)(iii). The immigration judge shall decide the application as provided in that section. Such decision may be appealed by either the stowaway or the Service to the Board of Immigration Appeals. If and when a denial of the application for asylum or withholding of removal becomes final, the alien shall be removed from the United States in accordance with section 235(a)(2) of the Act. If and when an approval of the application for asylum or withholding of removal becomes final, the Service shall terminate removal proceedings under section 235(a)(2) of the Act.

21. In Subpart B, § 208.31 is added to read as follows:

§ 208.31 Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act.

(a) *Jurisdiction.* This section shall apply to any alien ordered removed under section 238(b) of the Act or whose deportation, exclusion, or removal order is reinstated under section 241(a)(5) of the Act who, in the course of the administrative removal or reinstatement process, expresses a fear of returning to the country of removal. The Service has exclusive jurisdiction to make reasonable fear determinations, and EOIR has exclusive jurisdiction to review such determinations.

(b) *Initiation of reasonable fear determination process.* Upon issuance of a Final Administrative Removal Order under § 238.1 of this chapter, or notice under § 241.8(b) of this chapter that an alien is subject to removal, an alien described in paragraph (a) of this section shall be referred to an asylum officer for a reasonable fear determination. In the absence of exceptional circumstances, this determination will be conducted within 10 days of the referral.

(c) *Interview and Procedure.* The asylum officer shall conduct the interview in a non-adversarial manner, separate and apart from the general public. At the time of the interview, the asylum officer shall determine that the alien has an understanding of the reasonable fear determination process. The alien may be represented by counsel or an accredited representative at the interview, at no expense to the Government, and may present evidence, if available, relevant to the possibility of persecution or torture. The alien's representative may present a statement at the end of the interview. The asylum officer, in his or her discretion, may place reasonable limits on the number of persons who may be present at the interview and the length of the statement. If the alien is unable to proceed effectively in English, and if the asylum officer is unable to proceed competently in a language chosen by the alien, the asylum officer shall arrange for the assistance of an interpreter in conducting the interview. The interpreter may not be a representative or employee of the applicant's country or nationality, or if the applicant is stateless, the applicant's country of last habitual residence. The asylum officer shall create a summary of the material facts as stated by the applicant. At the conclusion of the interview, the officer shall review the summary with the alien and provide the alien with an opportunity to correct errors therein. The asylum officer shall create a written record of his or her determination, including a summary of the material facts as stated by the applicant, any additional facts relied on by the officers, and the officer's determination of whether, in light of such facts, the alien has established a reasonable fear of persecution or torture. The alien shall be determined to have a reasonable fear of persecution or torture if the alien establishes a reasonable possibility that he or she would be persecuted on account of his or her race, religion, nationality, membership in a particular social group or political opinion, or a reasonable possibility that he or she would be tortured in the country of removal. For purposes of the screening determination, the bars to eligibility for withholding of removal under section 241(b)(3)(B) of the Act shall not be considered.

(d) *Authority.* Asylum officers conducting screening determinations under this section shall have the authority described in § 208.9(c).

(e) *Referral to Immigration Judge.* If an asylum officer determines that an alien described in this section has a reasonable fear of persecution or torture, the officer shall so inform the alien and issue a Form I–863, Notice of Referral to the Immigration Judge, for full consideration of the request for withholding of removal only. Such cases shall be adjudicated by the immigration judge in accordance with the provisions of § 208.16 within 10 days of the issuance of the I–863. Appeal of the immigration judge's decision shall lie to the Board of Immigration Appeals.

(f) *Removal of aliens with no reasonable fear of persecution or torture.* If the asylum officer determines that the alien has not established a reasonable fear of persecution or torture, the asylum officer shall inform the alien in writing of the decision and shall inquire whether the alien wishes to have an immigration judge review the negative decision, using Form I–898, Record of Negative Reasonable Fear Finding and Request for Review by Immigration Judge, on which the alien shall indicate whether he or she desires such review.

(g) *Review by immigration judge.* The asylum officer's negative decision regarding reasonable fear shall be subject to review by an immigration judge upon the alien's request. If the alien requests such review, the asylum officer shall serve him or her with a Form I–863. The record of determination, including copies of the Form I–863, the asylum officer's notes, the summary of the material facts, and other materials upon which the determination was based shall be provided to the immigration judge with the negative determination. Upon review of the asylum officer's negative reasonable fear determination:

(1) If the immigration judge concurs with the asylum officer's determination that the alien does not have a reasonable

fear of persecution or torture, the case shall be returned to the Service for removal of the alien. No appeal shall lie from the immigration judge's decision.

(2) If the immigration judge finds that the alien has a reasonable fear of persecution or torture, the alien may submit Form I–589, Application for Asylum and Withholding of Removal.

(i) The immigration judge shall consider only the alien's application for withholding of removal under § 208.16 and shall determine whether the alien's removal to the country of removal must be withheld or deferred.

(ii) Appeal of the immigration judge's decision whether removal must be withheld or deferred lies to the Board of Immigration Appeals. If the alien or the Service appeals the immigration judge's decision, the Board shall review only the immigration judge's decision regarding the alien's eligibility for withholding or deferral of removal under § 208.16.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

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

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

23. Section 235.1 is amended by revising paragraph (d)(4) to read as follows:

§ 235.1 Scope of examination.

* * * * *

(d) * * *

(4) An alien stowaway is not an applicant for admission and may not be admitted to the United States. A stowaway shall be removed from the United States under section 235(a)(2) of the Act. The provisions of section 240 of the Act are not applicable to stowaways, nor is the stowaway entitled to further hearing or review of the removal, except that an alien stowaway who indicates an intention to apply for asylum, or expresses a fear of persecution, a fear of torture, or a fear of return to the country of proposed removal shall be referred to an asylum officer for a determination of credible fear of persecution or torture in accordance with section 235(b)(1)(B) of the Act and § 208.30 of this chapter. An alien stowaway who is determined to have a credible fear of persecution or torture shall have his or her asylum application adjudicated in accordance with § 208.2(b)(2) of this chapter.

* * * * *

24. In section 235.3, revise paragraph (b)(4) introductory text and paragraph (b)(4)(i)(D) to read as follows:

§ 235.3 Inadmissible aliens and expedited removal.

* * * * *

(b) * * *

(4) *Claim of asylum or fear of persecution or torture.* If an alien subject to the expedited removal provisions indicates an intention to apply for asylum, or expresses a fear of persecution, a fear of torture, or a fear of return to his or her country, the inspecting officer shall not proceed further with removal of the alien until the alien has been referred for an interview by an asylum officer in accordance with § 208.30 of this chapter to determine if the alien has a credible fear of persecution or torture. The examining immigration officer shall record sufficient information in the sworn statement to establish and record that the alien has indicated such intention, fear, or concern, and to establish the alien's inadmissibility.

(i) * * *

(D) The consequences of failure to establish a credible fear of persecution or torture.

* * * * *

25. In § 235.6, revise paragraphs (a)(1)(ii) and (iii), and paragraph (a)(2)(i) to read as follows:

§ 235.6 Referral to immigration judge.

(a) * * *

(1) * * *

(ii) If an asylum officer determines that an alien in expedited removal proceedings has a credible fear of persecution or torture and refers the case to the immigration judge for consideration of the application for asylum.

(iii) If the immigration judge determines that an alien in expedited removal proceedings has a credible fear of persecution or torture and vacates the expedited removal order issued by the asylum officer.

* * * * *

(2) * * *

(i) If an asylum officer determines that an alien does not have a credible fear of persecution or torture, and the alien requests a review of that determination by an immigration judge; or

* * * * *

26. In § 235.8, add a new paragraph (b)(4), to read as follows:

§ 235.8 Inadmissibility on security and related grounds.

* * * * *

(b) * * *

(4) The Service shall not execute a removal order under this section under circumstances that violate section 241(b)(3) of the Act or Article 3 of the Convention Against Torture. The provisions of part 208 of this chapter relating to consideration or review by an immigration judge, the Board of Immigration Appeals, or an asylum officer shall not apply.

* * * * *

PART 238—EXPEDITED REMOVAL OF AGGRAVATED FELONS

27. The authority citation for part 238 continues to read s follows:

Authority: 8 U.S.C. 1228; 8 CFR part 2.

28. In § 238.1, revise paragraphs (b)(2)(i) and (c)(1), and add new paragraph (f)(3) to read as follows:

§ 238.1 Proceeding under section 238(b) of the Act.

* * * * *

(b) * * *

(2) *Notice.*

(i) Removal proceedings under section 238(b) of the Act shall commence upon personal service of the Notice of Intent upon the alien, as prescribed by §§ 103.5a(a)(2) and 103.5a(c)(2) of this chapter. The Notice of Intent shall set forth the preliminary determinations and inform the alien of the Service's intent to issue a Form I–851A, Final Administrative Removal Order, without a hearing before an immigration judge. The Notice of Intent shall constitute the charging document. The Notice of Intent shall include allegations of fact and conclusions of law. It shall advise that the alien: has the privilege of being represented, at no expense to the government, by counsel of the alien's choosing, as long as counsel is authorized to practice in removal proceedings; may request withholding of removal to a particular country if he or she fears persecution or torture in that country; may inspect the evidence supporting the Notice of Intent; may rebut the charges within 10 calendar days after service of such Notice (or 13 calendar days if service of the Notice was by mail).

* * * * *

(c) * * *

(1) *Time for response.* The alien will have 10 calendar days from service of the Notice of Intent or 13 calendar days if service is by mail, to file a response to the Notice of Intent. In the response, the alien may: designate his or her choice of country for removal; submit a written response rebutting the allegations supporting the charge and/or requesting the opportunity to review the Government's evidence; and/or submit a statement indicating an intention to request withholding of removal under 8 CFR 208.16 of this chapter, and/or request in writing an extension of time

for response, stating the specific reasons why such an extension is necessary.

* * * * *

(f) * * *

(3) *Withholding of removal.* If the alien has requested withholding of removal under § 208.16 of this chapter, the deciding officer shall, upon issuance of a Final Administrative Removal Order, immediately refer the alien's case to an asylum officer to conduct a reasonable fear determination in accordance with § 208.31 of this chapter.

* * * * *

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

29. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; sec. 202, Pub. L. 105–100 (111 Stat. 2160, 2193); 8 CFR part 2.

30. In § 240.1, revise paragraph (a) to read as follows:

§ 240.1 Immigration Judges.

(a) *Authority.* (1) In any removal proceeding pursuant to section 240 of the Act, the immigration judge shall have the authority to:

(i) Determine removability pursuant to section 240(a)(1) of the Act; to make decisions, including orders of removal as provided by section 240(c)(1)(A) of the Act;

(ii) To determine applications under sections 208, 212(a)(2)(F), 212(a)(6)(F)(ii), 212(a)(9)(B)(v), 212(d)(11), 212(d)(12), 212(g), 212(h), 212(i), 212(k), 237(a)(1)(E)(iii), 237(a)(1)(H), 237(a)(3)(C)(ii), 240A(a) and (b), 240B, 245, and 249 of the Act and section 202 of Pub. L. 105–100;

(iii) To order withholding of removal pursuant to section 241(b)(3) of the Act and pursuant to the Convention Against Torture; and

(iv) To take any other action consistent with applicable law and regulations as may be appropriate.

(2) In determining cases referred for further inquiry, immigration judges shall have the powers and authority conferred upon them by the Act and this chapter. Subject to any specific limitation prescribed by the Act and this chapter, immigration judges shall also exercise the discretion and authority conferred upon the Attorney General by the Act as is appropriate and necessary for the disposition of such cases. An immigration judge may certify his or her decision in any case under section 240 of the Act to the Board of Immigration Appeals when it involves an unusually complex or novel question of law or fact. Nothing contained in this part shall be construed to diminish the authority conferred on immigration judges under sections 101(b)(4) and 103 of the Act.

* * * * *

PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

31. The authority citation for part 241 continues to read as follows:

Authority: 8 U.S.C. 1103, 1223, 1227, 1251, 1253, 1255, and 1330; 8 CFR part 2.

32. In § 241.8, revise paragraph (d) to read as follows:

§ 241.8 Reinstatement of removal orders.

* * * * *

(d) *Exception for withholding of removal.* If an alien whose prior order of removal has been reinstated under this section expresses a fear of returning to the country designated in that order, the alien shall be immediately referred to an asylum officer for an interview to determine whether the alien has a reasonable fear of persecution or torture pursuant to § 208.31 of this chapter.

* * * * *

33. In § 241.11, revise paragraph (d)(1) to read as follows:

§ 241.11 Detention and removal of stowaways.

* * * * *

(d) *Stowaways claiming asylum—*

(1) *Referral for credible fear determination.* A stowaway who indicates an intention to apply for asylum or a fear of persecution or torture upon return to his or her native country or country of last habitual residence (if not a national of any country) shall be removed from the vessel or aircraft of arrival in accordance with § 208.5(b) of this chapter. The immigration officer shall refer the alien to an asylum officer for a determination of credible fear in accordance with section 235(b)(1)(B) of the Act and § 208.30 of this chapter. The stowaway shall be detained in the custody of the Service pending the credible fear determination and any review thereof. Parole of such alien, in accordance with section 212(d)(5) of the Act, may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective. A stowaway who has established a credible fear of persecution or torture in accordance with § 208.30 of this chapter may be detained or paroled pursuant to § 212.5 of this chapter during any consideration of the asylum application. In determining whether to detain or parole the alien, the Service shall consider the likelihood that the alien will abscond or pose a security risk.

* * * * *

PART 253—PAROLE OF ALIEN CREWMEN

34. The authority citation in part 253 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1282, 1283, 1285; 8 CFR part 2.

35. In § 253.1, revise paragraph (f) to read as follows:

§ 253.1 Parole.

* * * * *

(f) *Crewman, stowaway, or alien removable under section 235(c) alleging persecution or torture.* Any alien crewman, stowaway, or alien removable under section 235(c) of the Act who alleges that he or she cannot return to his or her country of nationality or last habitual residence (if not a national of any country) because of fear of persecution in that country on account of race, religion, nationality, membership in a particular social group, or political opinion, or because of fear of torture is eligible to apply for asylum or withholding of removal under 8 CFR part 208. Service officers shall take particular care to ensure that the provisions of § 208.5(b) of this chapter regarding special duties toward aliens aboard certain vessels are closely followed.

* * * * *

36. Add a new part 507 to read as follows:

PART 507—ALIEN TERRORIST REMOVAL PROCEDURES

§ 507.1 Eligibility for Protection under the Convention Against Torture.

A removal order under Title V of the Act shall not be executed in circumstances that would violate Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention, as implemented by section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277. Convention-based claims by aliens subject to removal under this Title shall be determined by the Attorney General, in consultation with the Secretary of State.

Authority: Pub. L. 105–277, 112 Stat. 2681.

Dated: February 13, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–4140 Filed 2–18–99; 8:45 am]

BILLING CODE 4410–10–P

Friday
February 19, 1999

Part V

Department of Health and Human Services

Food and Drug Administration

Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting; Republication

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

Editorial note: Due to printing errors notice document FR Doc. 99-3630 published Thursday, February 18, 1999 at 64 FR 8224 is being republished in its entirety.

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 26, 1999, 8 a.m. to 5 p.m.

Location: Gaithersburg Marriott Washingtonian Center, Salons A, B, C, and D, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Sharon K. Lappalainen, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12514. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for a continuous glucose monitoring system that is indicated for the continuous recording of interstitial glucose levels in persons with diabetes mellitus.

Procedure: On February 26, 1999, from 8:30 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 22, 1999. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:45 a.m. Near the end of the committee deliberations, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission or topic before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 22, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On February 26, 1999, from 8 a.m. to 8:30 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) relating to present and future agency issues.

FDA regrets that it was unable to publish this notice 15 days prior to the February 26, 1999, Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 3, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

Editorial note: Due to printing errors notice document FR Doc. 99-3630 published Thursday, February 18, 1999 at 64 FR 8224 is being republished in its entirety.

[FR Doc. 99–3630 Filed 2–10–99; 12:50 pm]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 19, 1999

EDUCATION DEPARTMENT

Postsecondary education:

- Jacob K. Javits fellowship program; published 1-20-99

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

- Ambient air quality surveillance—
  - Lead air pollutant monitoring requirements; published 1-20-99

Air quality implementation plans; approval and promulgation; various States:

- California; published 12-21-98

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

- Terminal equipment, connection to telephone network—
  - Customer-provided terminal equipment; terms and conditions; U.S. and Canadian requirements harmonization; correction; published 1-20-99

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Practice and procedure:

- Settlement judge procedure; settlement part procedure addition; pilot program; published 2-19-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

- Agusta S.p.A.; published 1-15-99
- Airbus; published 1-15-99
- Allison Engine Co., Inc.; published 2-4-99
- Allison Engine Co., Inc.; correction; published 2-19-99
- Boeing; published 2-4-99
- Lockheed; published 1-15-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

- Bovine spongiform encephalopathy; disease status change—
  - Liechtenstein; comments due by 2-22-99; published 12-24-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

- Alaska; fisheries of Exclusive Economic Zone—
  - Pollock; Steller sea lion protection measures; comments due by 2-22-99; published 1-22-99
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  - Recordkeeping and reporting requirements; revisions; comments due by 2-22-99; published 2-5-99
  - Western Alaska community development quota program; comments due by 2-25-99; published 1-26-99
- Atlantic coastal fisheries cooperative management—
  - American lobster; comments due by 2-26-99; published 2-10-99
- West Coast States and Western Pacific fisheries—
  - Bottomfish and seamount groundfish; comments due by 2-22-99; published 1-6-99

International fisheries regulations:

- Pacific halibut; catch sharing plan; comments due by 2-26-99; published 2-11-99

Marine mammals:

- Commercial fishing authorizations—
  - Pacific offshore cetacean take reduction plan; placement of acoustic deterrent devices in nets of California/Oregon drift gillnet fishery; comments due by 2-22-99; published 1-22-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:

- Compression-ignition marine engines at or above 37 kilowatts; comments due by 2-26-99; published 12-11-98

Air programs:

- Stratospheric ozone protection—
  - New alternatives policy program; unacceptable refrigerants; listing; comments due by 2-25-99; published 1-26-99
  - New alternatives policy program; unacceptable refrigerents; listing; comments due by 2-25-99; published 1-26-99

Air quality implementation plans; approval and promulgation; various States:

- California; comments due by 2-22-99; published 1-21-99
- Kansas; comments due by 2-25-99; published 1-26-99
- Maryland; comments due by 2-25-99; published 1-26-99
- Missouri; comments due by 2-25-99; published 1-26-99
- Texas; comments due by 2-25-99; published 1-26-99
- Virginia; comments due by 2-22-99; published 1-22-99

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

- Missouri; comments due by 2-25-99; published 1-26-99
- Utah; comments due by 2-22-99; published 1-21-99

Clean Air Act:

- Interstate ozone transport reduction—
  - Section 126 petitions and Federal implementation plans; comments due by 2-22-99; published 1-13-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

- Triazamate; comments due by 2-22-99; published 12-23-98

FEDERAL EMERGENCY MANAGEMENT AGENCY

Flood insurance program:

- Insurance coverage and rates—
  - Pre-FIRM buildings in coastal areas subject to high velocity waters; premium increase; comments due by 2-25-99; published 1-26-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:

- Ambulance fee schedule; negotiated rulemaking committee; intent to establish and meeting; comments due by 2-22-99; published 1-22-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Resources and Services Administration

National practitioner data bank for adverse information on physicians and other health care practitioners:

- Medical malpractice payments reporting requirements; comments due by 2-22-99; published 12-24-98

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Community development block grants:

- Fair housing performance standards for acceptance of consolidated plan certifications and compliance with performance review criteria; comments due by 2-26-99; published 12-28-98

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

- Desert yellowhead; comments due by 2-22-99; published 12-22-98

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

- Kentucky; comments due by 2-24-99; published 1-25-99

LABOR DEPARTMENT

Mine Safety and Health Administration

Metal and nonmetal mine safety and health:

- Underground mines—
  - Diesel particulate matter exposure of miners;