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Presidential Documents

Title 3—

The President

Memorandum of January 5, 2000

Delegation of Authority Under Section 1406 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65)

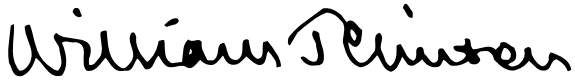
Memorandum for the Secretary of Energy

By the authority vested in me by the Constitution and laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of Energy and the Secretary of Defense the duties and responsibilities vested in the President by section 1406 of the National Defense Authorization Act for Fiscal Year 2000 (''the Act'') (Public Law 106–65).

The Departments of Energy and Defense shall jointly prepare a report with the assistance of the Department of State, the Department of Commerce, and the Director of Central Intelligence. The Departments of Defense and Energy shall obtain concurrence on the report from the following agencies: the Department of State, the Department of Commerce, and the Director of Central Intelligence on behalf of the Intelligence Community prior to submission to the Congress.

Any reference in this memorandum to the provisions of any Act shall be deemed to be a reference to such Act or its provisions as may be amended from time to time.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, January 5, 2000.

[FR Doc. 00–7426
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Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

5 CFR Chapter LXXIII

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture

AGENCY: Department of Agriculture (Department or USDA).

ACTION: Interim rule.

SUMMARY: The Department of Agriculture (Department or USDA), with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for Department employees that supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), as issued by OGE. The regulations set forth both a general requirement for certain Department employees to obtain prior approval before engaging in outside employment and separate, more-extensive prior approval requirements for employees of the USDA Farm Service Agency (FSA), Food Safety and Inspection Service (FSIS), Office of the General Counsel (OGC), and Office of Inspector General (OIG). They also contain certain restrictions on financial interests applicable to FSA employees.

DATES: These regulations are effective March 24, 2000. Comments must be received or postmarked on or before April 24, 2000.

ADDRESSES: Comments should be submitted to the Office of Ethics, U.S. Department of Agriculture, Room 348–-W—Stop 0122, 1400 Independence Avenue, SW., Washington, DC 20250–0122, telephone (202) 720–2251, Attention: John C. Surina, Director, Office of Ethics, or by e-mail at the following address: daeo.ethics@usda.gov.

FOR FURTHER INFORMATION CONTACT: John C. Surina, Director, Office of Ethics, U.S. Department of Agriculture, Room 348–W—Stop 0122, 1400 Independence Avenue, SW., Washington, DC 20250–0122, telephone (202) 720–2251.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published the new Standards, which became effective on February 3, 1993. The standards, as corrected and amended, are codified at 5 CFR part 2635. On October 3, 1997, the Department's Employee Conduct and Responsibilities regulations were removed. *See* 62 FR 51759–51760.

5 CFR 2635.105 authorizes agencies, with the concurrence of OGE, to publish agency-specific supplemental regulations that are necessary to implement their respective ethics programs. The Department, with OGE concurrence, has determined that the following interim supplemental rules being codified in a new chapter LXXIII of 5 CFR, consisting of part 8301, are necessary to the success of its ethics program.

II. Analysis of the Regulations

Section 8301.101 General

Section 8301.101 explains that the regulations apply to all Department employees and supplement the executive branchwide Standards. In addition, this section notes that employees of the Department are also subject to the Standards at 5 CFR part 2635, the executive branch financial disclosure regulations at 5 CFR part 2634, and additional regulations on employee responsibilities and conduct at 5 CFR part 735. This section also notes that agencies and components of the Department, with concurrence of the Designated Agency Ethics Official (DAEO), may issue explanatory guidance, internal procedures, and delegations of authority consistent with 5 CFR 2635.105. Finally, to facilitate agency employees, across the Department, in accessing and utilizing applicable agency-specific guidance and procedures, the section provides that the Deputy Ethics Official for each USDA agency or component shall retain copies of all such guidance issued by that agency or component.

Section 8301.102 General Prior Approval Requirement for Outside Employment

The Standards, at 5 CFR 2635.803, specifically recognize that an agency may find it necessary or desirable to issue a supplemental regulation requiring its employees, or any category of employees, to obtain approval before engaging in outside employment. Department employees, pursuant to the Department's Employee Conduct and Responsibilities regulations at 7 CFR part 0, long had been required to seek prior approval before engaging in outside employment. This regulatory requirement lapsed after November 1, 1996, upon the expiration of the last grace period extension granted by OGE for agency prior approval requirements and agency prohibitions on holding or acquiring financial interests in effect prior to the effective date of the Standards.

The Department found its prior approval requirement particularly useful in ensuring that the outside employment of USDA employees conformed with all applicable laws and regulations. At the same time, the former requirement for universal prior approval had been viewed as unnecessarily burdensome and intrusive, particularly in those instances in which the employee's outside employment posed little danger to the interests of USDA and its agencies, or where there was little or no nexus between the employee's official duties and his or her outside employment.

In accordance with 5 CFR 2635.803, USDA has determined that it is necessary to the administration of its departmentwide ethics program to again require certain of its employees to seek approval before engaging in any outside employment. The Department has determined that all USDA employees who file either a public or confidential financial disclosure report (SF 278 or OGE Form 450), or an alternative form of reporting approved by OGE, must seek approval before engaging in any outside employment. Financial disclosure report filers occupy high level positions or otherwise hold positions that have a direct and substantial effect on the interests of non-Federal entities. Accordingly, prior approval of these employees' outside employment is warranted. Approval, however, merely constitutes an

assessment that the employment, as described on the submission, generally does not appear likely to violate any criminal statutes or other ethics rules. It is not a determination that a criminal or ethical conflict could not arise. Thus, Department employees should remain sensitive to ethics issues and seek further ethics guidance should their outside work circumstances or official duties significantly change.

Included within the definition of employment, for purposes of this regulation, is participation in teaching, speaking, writing or editing that, irrespective of compensation, either relates to the employee's official duties or is undertaken pursuant to an invitation extended by any person who is a prohibited source to any employee of USDA. The Department is obligated, under numerous statutes, to protect from release to the public various types of information regarding its programs. For example, numerous statutes restrict the premature release of various types of information concerning the many different commodities regulated by USDA. Premature release of such information, or of other information from which such information could reasonably be derived, could result in misuse of position through unfair speculation in those commodity markets. The Department believes that its statutory interests in avoiding this result may be protected, with a minimum of interference to its employees, through the imposition of a prior approval requirement limited solely to those situations where there is a heightened potential for risk to USDA—where an employee engages in outside speaking, teaching, writing, or editing that may result in the release of protected information or where the invitation to engage in the outside employment comes from one who has an interest in obtaining such protected information.

In addition to the foregoing, departmentwide requirement for prior approval of outside employment, other USDA component offices and agencies have determined that prior approval is required for their employees not covered under the departmentwide requirement. The Department has determined that it is necessary to the administration of its ethics program to implement the additional component-specific requirements for obtaining prior approval for outside employment specified in paragraph (f) of § 8301.103, and in §§ 8301.104 through 8301.106.

Section 8301.103 Additional Rules for Employees of the Farm Service Agency

The Farm Service Agency has determined that certain additional rules are necessary in order to protect the integrity of its programs. Many FSA programs, particularly farm loan programs, are administered in a highly decentralized manner. Many FSA employees reside in the same small communities as the FSA loan applicants, borrowers, and program participants they serve. At the same time, many FSA employees and/or their family members are themselves farmers. Farm Service Agency employees often are part of the very farm community being serviced by the local FSA office. Given the opportunity and, in many cases, the need for regular, non-official interaction between FSA employees and those persons in their communities serviced by FSA, there is a need to establish for FSA employees certain limitations upon outside employment and to prohibit FSA employees from obtaining certain financial holdings.

Paragraph (a) of § 8301.103 specifies that the additional rules in the section apply solely to FSA personnel who are Federal employees within the meaning of 5 U.S.C. 2105. This specification is necessary to distinguish that FSA community committee members, county committee members, and county office personnel, who serve either by election, or by being employed by a committee or county office, under 16 U.S.C. 590h, are not covered by the additional rules in this section. Such personnel consistently have been deemed by Federal courts not to be Federal employees under 5 U.S.C. 2105. *See Hedman* v. *Department of Agriculture*, 915 F. 2d 1552 (Fed. Cir. 1990); *Hamlet* v. *United States*, 14 Cl. Ct. 62 (1988), vacated and remanded, 873 F.2d 1414 (Fed. Cir. 1989); *Hargens* v. *U.S. Department of Agriculture*, 865 F. Supp. 1314, 1320 (N.D. Iowa 1994). Also contained in this paragraph is a cross-reference to rules that do apply to FSA community committee members, county committee members, and county office personnel, at 7 CFR part 7.

Paragraph (b) defines the phrase ''FSA program participant'' to include any person who is, or is an applicant to become, an FSA borrower, FSA grantee, or recipient of any other form of FSA financial assistance available under any farm credit, payment or other program administered by FSA.

Section 8103.103 contains two prohibitions on FSA employees acquiring certain financial interests. Paragraph (c) generally prohibits an employee, or a spouse or minor child of an FSA employee, from directly or indirectly obtaining FSA direct loans. Paragraph (d) generally prohibits an employee, or a spouse or minor child of an FSA employee, from directly or indirectly purchasing certain FSA-related real properties. These prophylactic prohibitions reinstate similar provisions that existed before the executive branchwide Standards regulation superseded agency-specific rules.

Under 5 CFR 2635.403(a), an agency may, by supplemental regulation prohibit or restrict the acquisition or holding by its employees of financial interests that the agency determines would cause a reasonable person to question the impartiality or objectivity with which agency programs are administered. Many FSA farm loan borrowers are recipients of FSA direct loans which involve FSA as a ''lender-of-last-resort.'' Similarly, many FSA employees are themselves farmers. The Farm Service Agency has found that permitting its employees to obtain FSA direct loans creates a high-risk ethics environment for FSA employees. The Department must shield the administration of the loan program against self-dealing and a lack of impartiality. Moreover, the close proximity of FSA employees to FSA program participants, generally, and the dependence of FSA program participants on FSA, especially FSA loan applicants, also warrant supplemental safeguards against any FSA employee in a position to secure private gain for himself or herself, or for any other person, by virtue of the public position he or she holds. Further, the restrictions will avoid the potential for disqualification of critical employees from official duties which might result in FSA being unable to fulfill its mission.

The prohibitions under paragraphs (c) and (d) apply whether the prohibited financial interest involved is obtained directly or indirectly. Thus, for example, an FSA employee would violate paragraph (c) should he or she obtain FSA direct loan funds through an agreement with another person under which the other party poses as a ''front'' for the FSA employee (*e.g.*, by applying for an FSA loan knowing that a portion of the loan funds will be provided by him or her to the FSA employee for the employee's personal use). The same would be true for utilizing a ''front'' for the purchase of otherwise prohibited property.

Because application of the prohibitions in paragraphs (c) and (d) may result in undue financial hardship to various FSA employees in certain

instances, the prohibitions are tempered in application by the inclusion of various exceptions and waiver provisions. Paragraph (c) is subject to an exception permitting retention of direct loans secured by FSA employees either prior to the effective date of this regulation, March 24, 2000, or secured after such date, but prior to the FSA employee being appointed to, or nominated for appointment to an FSA position. Also, this prohibition may be waived for FSA State Committee members where the conditions stated in paragraph (c)(3) have been met. As State Committee members are special Government employees, application of the prohibition under paragraph (c) would result in an undue financial hardship to those State Committee members who are farmers by occupation. The exception for pre-existing loans and the waiver for State Committee members are available for use by a relatively small number of employees, to whom application of the prohibition would pose an inordinate financial hardship when compared to any perceived ethical dangers that they are likely to encounter through having an FSA direct loan.

The prohibition under paragraph (d) is subject to waiver based on a determination made by the FSA State Executive Director, in response to a written waiver request submitted jointly to the FSA State Executive Director by both the FSA employee and FSA program participant, that the purchase is not inconsistent with part 2635 of this title; that it is not otherwise prohibited by law, including, 7 U.S.C. 1986; and that, under the circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, nor otherwise needed to ensure confidence in the impartiality and objectivity with which agency programs are administered. FSA has chosen to employ a broad standard for exemption to this prohibition because there exist numerous situations in which the primary benefit from the exemption accrues not to the FSA employee but rather to the FSA program participant. For example, in many small farming communities, an FSA borrower may have difficulty in finding a buyer for his or her property. Since flat application of this prohibition could result in significant financial harm to the very persons whom FSA programs are intended to serve, FSA believes that an effective and fair solution involves a waiver procedure under which the FSA State Executive Director would make a determination balancing ethical considerations against the potential financial hardship to the FSA program participant. This process provides flexibility and fairness while raising the level of decision making visibility and accountability.

Paragraph (e) of this section sets forth a general prohibition against an FSA employee and a spouse or minor child of an FSA employee engaging in certain transactions with persons whom the FSA employee knows or reasonably should know to be a FSA program participant directly affected by decisions made by the employee's FSA office, unless certain exceptions apply. The transactions covered by this general prohibition include sales of real property, leases of real or personal property, the sale or purchase of personal property, and engaging for personal services. The prohibition does not apply to transactions involving goods available to the general public at posted prices that are customary and usual within the community (*e.g.*, sale of a tractor through placing an advertisement in the local newspaper) or to transactions involving the purchase or sale of property pursuant to a public auction. The prohibition also does not apply where a transaction is determined in advance by the appropriate FSA State Executive Director, after consulting with the FSA Headquarters ethics advisor, to be consistent with the Standards and otherwise not prohibited by law. This general prohibition reflects, in large part, a similar requirement that existed within those current segments of FSA that formerly were part of Farmers Home Administration and which lapsed upon publication of the Standards as a final rule.

Since farm leases and other transactions between FSA employees and FSA program participants are so prevalent within the farming community, FSA has determined that a prohibition without providing FSA employees the opportunity to obtain an advance determination that the transaction would be consistent with ethics requirements would work an undue financial hardship upon both the FSA employees, their spouses and minor children, and the FSA program participants. Requiring requests for advance determinations to be submitted to the FSA State Executive Director pursuant to the exception provides for the agency's need to have control over these interactions without imposing undue financial hardship. As a result, approved transactions will have the visibility and accountability addressed previously with regard to the prohibition in paragraph (d). Further, the determination of the FSA State Executive Director is to be based upon the same standard employed in paragraph (d).

Paragraph (f) of § 8301.103 requires an FSA employee, not otherwise required to do so under § 8301.102, to obtain prior approval from the agency before engaging in outside employment with a person whom the FSA employee knows, or reasonably should know, to be an FSA program participant directly affected by decisions made by the particular FSA office in which the FSA employee serves. This requirement reflects, in large part, a similar requirement that existed within those segments of FSA that formerly were part of Farmers Home Administration and which lapsed on November 1, 1996. While outside interaction is vital to the FSA employees and to the community in which they live, the potential for outside employment opportunities to lead to favoritism and a loss of impartiality is significant enough to justify agency concerns. Thus, FSA has determined that it is necessary to require approval before *any* of its employees may engage in any outside employment involving an FSA program participant directly affected by decisions made by the office in which the FSA employees serves.

Section 8301.104 Additional Rules for Employees of the Food Safety and Inspection Service

The Food Safety and Inspection Service has determined that it is necessary to require prior approval before *any* of its employees, not otherwise required to do so under section 8301.102, may engage in any outside employment. The implementation of Hazard Analysis and Critical Control Points (HACCP) systems within the regulated industry, as well as the anticipated creation of Consumer Safety Officer positions, means that FSIS employees of all pay levels will be involved in ensuring food safety and, therefore, will be facing increased exposure to the food industry. Given the vital importance to public health of maintaining high standards of food safety in light of the changing nature of FSIS responsibilities through HACCP, FSIS believes that its long-standing requirement of universal prior approval for outside employment is even more necessary.

Section 8301.105 Additional Rules for Employees of the Office of the General Counsel

The USDA Office of the General Counsel previously has required lawyers serving within that office to

obtain prior approval before engaging in the outside practice of law. Given the fiduciary duties performed for the Department by OGC, such a requirement has been particularly useful in ensuring that the outside practice of law does not interfere or conflict with the official duties of attorneys within that Office. Accordingly, the Department has determined that it is necessary to require that all attorneys serving in OGC seek prior approval before engaging in outside employment involving the practice of law.

Section 8301.106 Additional Rules for Employees of the Office of Inspector General

The Office of Inspector General has determined that it is necessary to require prior approval before any of its employees may engage in outside employment involving law enforcement, investigation, security, firearms training, defensive tactics training, protective services, auditing, accounting, tax preparation, practice of law, and employment involving personnel, procurement, budget, computer, or equal employment opportunity services. The OIG had long relied upon the departmental prior approval requirement. The OIG has a wide range of responsibilities for investigation and auditing of departmental operations. These mission activities are of a highly sensitive nature. The aforementioned types of outside employment involve duties that, under certain circumstances, are similar to the mission activities of OIG, and therefore are more likely to create an actual or apparent conflict of interest. The Department has determined that it is necessary to the administration of its ethics program to require prior approval for the identified types of outside employment that pose a potential for OIG employees to engage in conduct that might violate applicable laws and regulations.

III. Matters of Regulatory Procedure

Administrative Procedure Act

The Department has found that good cause exists under 5 U.S.C. 553(b) and (d) for waiving, as unnecessary and contrary to public interest, the general notice of proposed rulemaking, opportunity for comment and the 30-day delay in effectiveness as to this interim rule. This rulemaking contains statements of policy, interpretive rules, and conduct regulations related solely to Department personnel and, in significant part, reissues in revised form the outside employment rules previously published in 7 CFR part 0. Delaying the effectiveness of this rule could also result in an effort by some employees likely to be affected by the rules on outside employment and prohibited financial interests to engage in covered outside employment or to obtain covered financial interests prior to the effective date of this rule.

However, because this rule may be improved, comments may be submitted on or before April 24, 2000. All comments will be analyzed and any appropriate changes to the rule will be incorporated in the subsequent publication of the final rule.

Congressional Review

The Department has found that this rulemaking is not a rule as defined in 5 U.S.C. 804, and, thus, does not require review by Congress. This rulemaking is related to Department personnel.

Executive Orders Nos. 12866 and 12988

Since this rule relates to Department personnel, it is exempt from the provisions of Executive Orders Nos. 12866 and 12988.

Regulatory Flexibility Act

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Department employees.

Paperwork Reduction Act

The Department has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Environmental Impact

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

List of Subjects in 5 CFR Part 8301

Conflict of interests, Executive branch standards of conduct, Government employees.

Dated: March 16, 2000.

Dan Glickman,

Secretary of Agriculture.

Approved: March 17, 2000.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Department of Agriculture, with the concurrence of the Office of Government Ethics, is amending Title 5 of the Code of Federal Regulations by adding a new chapter LXXIII, consisting of Part 8301, to read as follows:

CHAPTER LXXIII—DEPARTMENT OF AGRICULTURE

PART 8301—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF AGRICULTURE

Sec.

8301.101 General.
8301.102 Prior approval for outside employment.
8301.103 Additional rules for employees of the Farm Service Agency.
8301.104 Additional rules for employees of the Food Safety and Inspection Service.
8301.105 Additional rules for employees of the Office of the General Counsel.
8301.106 Additional rules for employees of the Office of Inspector General.

Authority: 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.803, 2635.807(a)(2)(ii).

§ 8301.101 General.

(a) In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Agriculture (Department or USDA) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

(b) In addition to 5 CFR part 2635 and this part, employees also are required to comply with the executive branch financial disclosure regulations at 5 CFR part 2634, the regulations on responsibilities and conduct contained in 5 CFR part 735, and Department guidance and procedures established pursuant to paragraph (c) of this section.

(c) With the concurrence of the Designated Agency Ethics Official (DAEO), agencies and components of the Department may, in accordance with 5 CFR 2635.105(c), issue explanatory guidance for their employees and establish procedures necessary to implement this part and part 2635 of this title. The Deputy Ethics Official for each agency or component shall retain copies of all such guidance issued by that agency or component.

§ 8301.102 Prior approval for outside employment.

(a) *Prior approval requirement.* An employee, other than a special Government employee, who is required to file either a public or confidential financial disclosure report (SF 278 or OGE Form 450), or an alternative form of reporting approved by the Office of Government Ethics, shall, before

engaging in outside employment, obtain written approval in accordance with the procedures set forth in paragraph (c) of this section.

(b) *Definition of employment.* For purposes of this section, ''employment'' means any form of non-Federal employment or business relationship or activity involving the provision of personal services by the employee for direct, indirect, or deferred compensation other than reimbursement of actual and necessary expenses. It also includes, irrespective of compensation, the following outside activities:

(1) Providing personal services as a consultant or professional, including service as an expert witness or as an attorney;

(2) Engaging in teaching, speaking, writing, or editing that:

(i) Relates to the employee's official duties within the meaning of 5 CFR 2635.807(a)(2)(i)(B) through (E); or

(ii) Would be undertaken as a result of an invitation to engage in the activity that was extended by a person who is a prohibited source within the meaning of 5 CFR 2635.203(d); and

(3) Providing personal services to a non-Federal entity as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee, which involves decision making or policymaking for the non-Federal entity, or the provision of advice, counsel, consultation, unless such personal services are provided:

(i) To a political, religious, employee, social, fraternal, or recreational organization; and (ii) Without compensation other than reimbursement of expenses.

(c) *Submission of requests for approval.* An employee seeking to engage in employment for which advance approval is required shall submit a written request for approval to the employee's supervisor a reasonable time before the employee proposes to begin the employment. Upon a significant change in the nature of the outside employment or in the employee's official position, the employee shall submit a revised request for approval. The supervisor will forward written requests for approval to the agency designee, or to the DAEO where no agency designee exists, through normal supervisory channels. All requests for prior approval shall include the following information:

(1) The employee's name, organizational location, occupational title, grade, and salary;

(2) The nature of the proposed outside employment, including a full description of the specific duties or services to be performed;

(3) A description of the employee's official duties that relate in any way to the proposed employment;

(4) The name and address of the person or organization for whom or with which the employee is to be employed, including the location where the services will be performed;

(5) The estimated total time that will be devoted to the outside employment. If the proposed outside employment is to be performed on a continuing basis, a statement of the estimated number of hours per year; for other employment, a statement of the anticipated beginning and ending dates;

(6) A statement as to whether the work can be performed entirely outside of the employee's regular duty hours and, if not, the estimated number of hours of absence from work that will be required;

(7) The method or basis of any compensation (*e.g.,* fee, per diem, honorarium, royalties, stock options, travel and expenses, or other);

(8) A statement as to whether the compensation is derived from a USDA grant, contract, cooperative agreement, or other source of USDA funding;

(9) For employment involving the provision of consultative or professional services, a statement indicating whether the client, employer, or other person on whose behalf the services are performed is receiving, or intends to seek, a USDA grant, contract, cooperative agreement, or other funding relationship; and

(10) For employment involving teaching, speaking, writing or editing, the proposed text of any disclaimer required by 5 CFR 2635.807(b).

(d) *Standard for approval.* Approval shall be granted by the agency designee (or the DAEO, when there is not an agency designee) unless it is determined that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 or this part.

(e) *Responsibilities of the Designated Agency Ethics Official and component agencies.* (1) The DAEO or, with the concurrence of the DAEO, each separate agency or component of USDA may issue an instruction or manual issuance exempting categories of employment from a requirement of prior written approval based on a determination that employment within those categories would generally be approved and is not likely to involve conduct prohibited by Federal statutes or regulations, including 5 CFR part 2635 and this part.

(2) Department components may specify internal procedures governing the submission of prior approval requests and designate appropriate officials to act on such requests. The instructions or manual issuances may include examples of outside employment that are permissible or impermissible consistent with 5 CFR part 2635 and this part. With respect to employment involving teaching, speaking, writing, or editing, the instructions or manual issuances may specify pre-clearance procedures and/or require disclaimers indicating that the views expressed do not necessarily represent the views of the agency, USDA or the United States.

(3) The officials within the respective USDA agencies or components responsible for the administrative aspects of these regulations and the maintenance of records shall make provisions for the filing and retention of requests for approval of outside employment and copies of the notification of approval or disapproval.

§ 8301.103 Additional rules for employees of the Farm Service Agency.

(a) *Application.* This section applies only to Farm Service Agency (FSA) personnel who are Federal employees within the meaning of 5 U.S.C. 2105. This section does not apply to FSA community committee members, county committee members, and county office personnel, who are either elected to their positions or are employees of community or county committees established under 16 U.S.C. 590h. For rules applicable to FSA community committee members, county committee members, and county office personnel, see 7 CFR part 7.

(b) *Definition of FSA program participant.* For purposes of this section, the phrase ''FSA program participant,'' includes any person who is, or is an applicant to become, an FSA borrower, FSA grantee, or recipient of any other form of FSA financial assistance available under any farm credit, payment or other program administered by FSA.

(c) *Prohibited borrowing.* (1) No FSA employee, or spouse or minor child of an FSA employee, may directly or indirectly seek or obtain a ''direct loan'' under paragraph (a)(9) of section 343 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1991(a)(9).

(2) Nothing in this section bars an FSA employee, or spouse or minor child of an FSA employee, from retaining a direct loan secured prior to March 24, 2000 or, if subsequent to March 24, 2000, such direct loan is secured prior to the FSA employee being appointed to, or nominated for appointment to an FSA position. Any FSA employee who either personally has such a pre-existing loan, or whose spouse or minor child has such a pre-existing loan, must

submit a written disqualification from taking any official action on any such loan. Other than through the application of normal FSA loan servicing options set forth under FSA regulations, the terms of any such pre-existing loans shall remain fixed and shall not be subject to renegotiation or renewal unless pursuant to policy decision(s) made by the USDA Secretary or the FSA Administrator.

(3) *Waiver for FSA State Committee members.* A request for an exception to the general prohibition of paragraph (c)(1) of this section may be submitted by an FSA State Committee member (whether on his or her own behalf, or on behalf the FSA State Committee member's spouse or minor child), to the FSA Deputy Administrator for Farm Loans. The Deputy Administrator for Farm Loans may grant a written waiver from this prohibition based on a determination made with the concurrence of the DAEO and the FSA headquarters ethics advisor that:

(i) The applicant is a current FSA State Committee member or the spouse or minor child of a current FSA State Committee member;

(ii) The applicant meets the statutory qualification requirements for obtaining a direct loan; and

(iii) A waiver is not inconsistent with part 2635 of this title nor 7 U.S.C. 1986 nor otherwise prohibited by law, and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position, including the appearance of misuse of non-public information, or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered.

(d) *Prohibited real estate purchases.* (1) No FSA employee, or spouse or minor child of an FSA employee, may directly or indirectly purchase real estate held in the FSA inventory, for sale under forfeiture to FSA, or from an FSA program participant.

(2) *Waiver.* A request for an exception to the prohibition found in paragraph (l)(1) of this section may be submitted jointly by the FSA program participant and FSA employee (whether on his or her own behalf, or on behalf of the employee's own spouse or minor child), to the FSA State Executive Director. The FSA State Executive Director may grant a written waiver from this prohibition based on a determination made with the advice and clearance of the DAEO and the FSA headquarters ethics advisor that the waiver is not inconsistent with part 2635 of this title nor 7 U.S.C. 1986 nor otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

(e) *Prohibited transactions with FSA program participants.* (1) Except as provided in paragraph (e)(2) of this section, no FSA employee or spouse or minor child of an FSA employee may directly or indirectly: Sell real property to; lease real property to or from; sell to, lease to or from, or purchase personal property from; or employ for compensation a person whom the FSA employee knows or reasonably should know is an FSA program participant directly affected by decisions of the particular FSA office in which the FSA employee serves.

(2) *Exceptions.* Paragraph (e)(1) of this section does not apply to:

(i) A sale, lease, or purchase of personal property, if it involves:

(A) Goods available to the general public at posted prices that are customary and usual within the community; or

(B) Property obtained pursuant to public auction; or

(ii) Transactions listed in paragraph (e)(1) of this section determined in advance by the appropriate FSA State Executive Director, after consulting with the FSA Headquarters ethics advisor, to be consistent with part 2635 of this title and otherwise not prohibited by law.

(f) *Additional prior approval requirement for outside employment.* Any FSA employee not otherwise required to obtain approval for outside employment under § 8301.102 shall obtain written approval in accordance with the procedures set forth in paragraph (c) of § 8301.102 before engaging in outside employment, as that term is defined by paragraph (b) of § 8301.102, with or for a person:

(1) Whom the FSA employee knows, or reasonably should know, is an FSA program participant; and

(2) Who is directly affected by decisions made by the particular FSA office in which the FSA employee serves.

§ 8301.104 Additional rules for employees of the Food Safety and Inspection Service.

Any employee of the Food Safety and Inspection Service not otherwise required to obtain approval for outside employment under § 8301.102, shall, before engaging in any form of outside employment, obtain written approval in accordance with the procedures set forth in paragraph (c) of § 8301.102.

§ 8301.105 Additional rules for employees of the Office of the General Counsel.

Any attorney serving within the Office of the General Counsel, not otherwise required to obtain approval for outside employment under § 8301.102, shall obtain written approval, in accordance with the procedures set forth in paragraph (c) of § 8301.102, before engaging in the outside practice of law, whether compensated or not.

§ 8301.106 Additional rules for employees of the Office of Inspector General.

Any employee of the Office of Inspector General, not otherwise required to obtain approval for outside employment under § 8301.102, shall obtain written approval, in accordance with the procedures set forth in paragraph (c) of § 8301.102, before engaging in any form of outside employment that involves the following:

(a) Law enforcement, investigation, security, firearms training, defensive tactics training, and protective services;

(b) Auditing, accounting, bookkeeping, tax preparation, and other services involving the analysis, use, or interpretation of financial records;

(c) The practice of law, whether compensated or not; or

(d) Employment involving personnel, procurement, budget, computer, or equal employment opportunity services.

[FR Doc. 00–7275 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–01–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 75

[Docket Number LS–99–06]

Increase in Fees for Federal Seed Testing and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing the hourly fee rate charged for voluntary Federal seed testing and certification services. The fee rate is increased to cover increases in salaries of Federal employees, rent, supplies, replacement equipment, and other increased Agency costs.

EFFECTIVE DATE: Effective April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Richard C. Payne, Chief, Seed

Regulatory and Testing Branch, Livestock and Seed Program, AMS, Room 209, Building 306, BARC–E., Beltsville, Maryland 20705–2325, Telephone (301) 504–9430, FAX (301) 504–8098.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. The rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

There are no administrative procedures that must be exhausted prior to judicial challenge to the provision of this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

The Administrator, AMS, has certified that this action will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

The AMS provides, under the authority of the Agricultural Marketing Act (AMA) of 1946, a voluntary, user-fee funded seed testing and certification service to approximately 65 businesses per year. Many of the users of the testing and certification services would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.601). Over ninety percent of the samples tested in this program represent seed and grain scheduled for export. Grain is examined for the presence of specified weed and crop seeds upon request of the Department's Grain Inspection, Packers and Stockyards Administration. A Federal Seed Analysis Certificate, containing purity, germination, noxious-weed seed examination, and other test results is issued upon completion of the testing. The Federal Seed Analysis Certificate is required documentation for shipments of seed and grain from the United States entering certain countries.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Without a fee increase, FY 2000 revenues for seed testing and certification services are projected at $104,000, costs are projected at $108,000, and the trust fund balance would be $78,000. With a fee increase, FY 2000 revenues are projected at $114,000, costs are projected at $113,000, and the trust fund balance would be $83,000.

This action will raise the hourly rate charged to users of the seed testing and certification services. The AMS estimates that this proposed rule will yield an additional $10,000 during FY 2000. The hourly rate for seed testing and certification services will increase by approximately 9.9 percent. The costs to entities will be proportional to their use of the service, so that costs are shared equitably by all users. The increase in costs to individual firms will be, on average, approximately $6.70 per Federal Seed Analysis Certificate issued. There will also be an increase of $1.10 for each duplicate certificate issued.

This action will result in no increase to the previously approved information collection requirements for the voluntary Federal seed testing and certification service. The information collection requirements that appear in Part 75 of the regulations have been previously approved by OMB and assigned OMB Control Number 0581–0140 under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Background

The Secretary of Agriculture is authorized by the AMA of 1946, as amended, 7 U.S.C. 1621 *et seq.*, to provide voluntary Federal seed testing and certification services to facilitate the orderly marketing of seed and grain and to enable consumers to obtain the quality of seed and grain they desire. The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the costs of services rendered.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate and if costs are reasonable. This action will increase the hourly fee rate and changes for voluntary seed testing and certification services provided to the seed and grain industries to reflect the costs currently associated with providing the services.

A recent review of the current hourly fee rate, effective October 1, 1998, revealed that anticipated revenue will not cover increased program costs. Without a fee increase FY 2000 revenues for seed testing and certification services are projected at $104,000, costs are projected at $108,000, and the trust fund balance would be $78,000. With a fee increase, FY 2000 revenues are projected at $114,000, costs are projected at $113,000, and the trust fund balance would be $83,000.

The hourly fee for service is established by distributing the projected annual program operating costs over the estimated hours of service—revenue hours—provided to users of the service. Revenue hours include the time spent conducting tests, keeping sample logs, preparing Federal Seed Analysis Certificates and storing samples. As program operating costs continue to rise, the hourly fees must be adjusted to enable the program to remain financially self-supporting as required by law. Program operating costs include salaries and fringe benefits of seed analysts, supervision, training, and all administrative costs of operating the program.

Employee salaries and benefits account for approximately 90 percent of the total budget. A general and locality salary increase of 3.68 percent for Federal employees involved in the seed testing and certification service became effective in January 1999 and has materially affected program costs. Another general and locality salary increase of 4.94 percent became effective in January 2000.

This fee increase is necessary to offset increased program operating costs resulting from: (1) salary increases for all Federal employees for 1999 and 2000, (2) increases in rent, (3) increases in costs of supplies needed for testing samples, and (4) purchases of replacement equipment needed to provide the service.

In view of these increases in costs, the Agency is increasing the hourly rate charged to applicants for the service, including the issuance of Federal Seed Analysis Certificates from $40.40 to $44.40. The fee for issuing additional duplicate certificates will increase from $10.10 to $11.10.

The action will fully recover all costs associated with providing the voluntary testing service to the seed and grain industry. Although the user-fee increase will increase costs to individual firms, the cost for providing the seed testing and certification services will increase by an average of only $6.70 per Federal Seed Analysis Certificate and $1.10 for each duplicate certificate. It is estimated that the total revenue generated will increase by approximately $10,000 annually.

Summary of Public Comment

A notice of proposed rulemaking was published in the **Federal Register** (64 FR 58358) on October 29, 1998. Interested persons were invited to submit comments until December 28, 1999. No comments were received.

List of Subjects in 7 CFR Part 75

Administrative practice and procedure, Agricultural commodities, Reporting and record keeping requirements, Seeds, Vegetables.

For the reasons set forth in the preamble, 7 CFR Part 75 is amended as follows:

PART 75—REGULATIONS FOR INSPECTION AND CERTIFICATION OF QUALITY OF AGRICULTURAL AND VEGETABLE SEEDS

1. The authority citation for Part 75 continues to read as follows:

Authority: 7 U.S.C. 1622 and 1624.

§ 75.41 [Amended]

2. In § 75.41, ''$40.40'' is removed and ''$44.40'' is added in its place.

§ 75.47 [Amended]

3. In § 75.47, ''$10.10'' is removed and ''$11.10'' is added in its place.

Dated: March 20, 2000.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 00–7276 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV00–985–3 IFR–A]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1999–2000 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule amends a prior interim final rule that increased the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year. The prior interim final rule increased the Native spearmint oil salable quantity by 102,311 pounds from 1,125,755 pounds to 1,228,066 pounds, and the allotment percentage by 5 percent from 55 percent to 60 percent. This rule increases the Native spearmint oil salable quantity by an additional 81,849 pounds from 1,228,066 to 1,309,915 pounds, and the allotment percentage by an additional 4 percent from 60 percent to 64 percent. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule to avoid extreme fluctuations in supplies and prices, and, thus, help to maintain stability in the Far West spearmint oil market.

DATES: Effective on March 25, 2000 through May 31, 2000; comments received by April 24, 2000 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada, and Utah), hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1999–2000 marketing year, which ends on May 31, 2000. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for approximately 63 percent of the annual U.S. production of Scotch spearmint oil and approximately 93 percent of the annual U.S. production of Native spearmint oil.

This rule amends an interim final rule that was published in the **Federal Register** on February 10, 2000 (65 FR 6528). That rule, which was based on a unanimous Committee recommendation

made at a meeting on January 13, 2000, increased the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year, which ends on May 31, 2000. Specifically, that rule increased the salable quantity by 102,311 pounds from 1,125,755 pounds to 1,228,066 pounds, and the allotment percentage by 5 percent from 55 percent to 60 percent.

This amended interim final rule, which is based on a unanimous Committee recommendation made at a meeting on February 23, 2000, increases the salable quantity an additional 81,849 pounds from 1,228,066 pounds to 1,309,915 pounds, and the allotment percentage an additional 4 percent from 60 percent to 64 percent for Native spearmint oil for the 1999–2000 marketing year.

The initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 1999–2000 marketing year were recommended by the Committee at its October 7, 1998, meeting. The Committee recommended salable quantities of 1,199,190 pounds and 1,125,755 pounds, and allotment percentages of 65 percent and 55 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the November 17, 1998, issue of the **Federal Register** (63 FR 63804). A final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1999–2000 marketing year was published in the January 19, 1999, issue of the **Federal Register** (64 FR 2799).

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The salable quantity calculated by the Committee is based on the estimated trade demand. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

Sections 985.50, 985.51, and 985.52 provide the Committee authorization to consider and recommend salable quantities and allotment percentages for each class of spearmint oil for an ensuing marketing year. Section 985.51(b) provides the authority for the Committee to recommend that an increase in the salable quantity and allotment percentage for either or both classes of oil be considered.

Taking into consideration the following discussion on adjustments to the Native spearmint oil salable quantity, the revised 1999–2000 marketing year salable quantity of 1,228,066 pounds will, therefore, be increased to 1,309,915 pounds.

The original total industry allotment base for Native spearmint oil for the 1999–2000 marketing year was established at 2,046,828 pounds and was revised during the year to 2,046,214 pounds to reflect a loss of 614 pounds of base due to non-production of some producers' total annual allotments. The Committee has used this revised allotment base in computing the increases to the Native spearmint oil salable quantity.

By increasing the salable quantity and allotment percentage from 1,228,066 pounds to 1,309,915 pounds, this amended interim final rule makes an additional amount of Native spearmint oil available by releasing such oil from the reserve pool. When applied to each individual producer, the additional 4 percent allotment percentage increase allows each producer to take up to an amount equal to 4 percent of their allotment base from their Native spearmint oil reserve. If a producer does not have any reserve pool oil, or has less than 4 percent of their allotment base in the reserve pool, the increase in allotment percentage will actually make less than such amount available to the market. Currently, producers receiving 8,304 pounds of additional allotment through this increase do not have any Native spearmint oil in reserve. Thus, rather than the computed 81,849 additional pounds, this action effectively makes an additional 73,545 pounds of Native spearmint oil available to the market.

The following summarizes the Committee recommendation: Factors Affecting the Amended Native Spearmint Oil Salable Quantity and Allotment Percentage

(A) Estimated 1999–2000 Allotment Base—2,046,828 pounds. This is the figure the original 1999–2000 salable quantities and allotment percentages for both classes of spearmint oil were based on.

(B) Revised 1999–2000 Allotment Base—2,046,214 pounds. This is 614 pounds less than the estimated allotment base of 2,046,828 pounds. This is less because some producers failed to produce all of their previous year's allotment.

(C) Initial 1999–2000 Allotment Percentage—55 percent. This was recommended by the Committee on October 7, 1998.

(D) Initial 1999–2000 Salable Quantity—1,125,755 pounds. This figure is 55 percent of the estimated allotment base of 2,046,828 pounds.

(E) Initial Increase in Allotment Percentage—5 percent. This was recommended by the Committee on January 13, 2000.

(F) Initial Revision of the 1999–2000 Allotment Percentage—60 percent. This figure was derived by adding the initial increase in the allotment percentage of 5 percent to the initial 1999–2000 allotment percentage of 55 percent and was effective on February 11, 2000.

(H) Initial Computed Increase in the 1999–2000 Salable Quantity—102,311 pounds. This is the product of the revised 1999–2000 allotment base of 2,046,214 and the initial 5 percent increase.

(I) Initially Revised 1999–2000 Salable Quantity—1,228,066 pounds. This figure, effective on February 11, 2000, is the sum of the initial salable quantity of 1,125,755 pounds and the initial computed increase of 102,311 pounds, and is approximately 60 percent of the estimated 1999–2000 allotment base of 2,046,214 pounds.

(J) Additional Increase in the Allotment Percentage—4 percent. This percentage increase was recommended by the Committee at its February 23, 2000, meeting.

(K) Amended 1999–2000 Allotment Percentage—64 percent. This is the sum of the initial allotment percentage of 55 percent, and the 5 and 4 percent increases.

(L) Additional Computed Increase in the 1999–2000 Salable Quantity—81,849 pounds. This is the product of the revised 1999–2000 allotment base of 2,046,214 pounds and the additional 4 percent increase in the allotment percentage.

(M) 1999–2000 Salable Quantity as Revised by this Amended Interim Final Rule—1,309,915 pounds. This figure is the sum of the revised salable quantity of 1,228,066 and the additional computed increase of 81,849 pounds, and is approximately 64 percent of the revised 1999–2000 allotment base of 2,046,214 pounds.

In making this latest recommendation, the Committee considered all available information on supply and demand. The 1999–2000 marketing year began on June 1, 1999. Handlers have indicated that with this action, the available supply of both Scotch and Native spearmint oils appears adequate to meet anticipated demand through May 31, 2000. Without the increase, the Committee believes the industry will not be able to meet market needs. As of February 23, 2000, approximately

40,966 pounds of Native spearmint oil was available for market. During the past 5 years, the average sales of Native spearmint oil from March 1 to May 31 totaled 75,586 pounds, while the average sales for the period June 1 through February 29 totaled 1,087,385 pounds. The Far West spearmint oil industry has sold approximately 1,282,150 pounds of Native spearmint oil through February 23, 2000. This action has the effect of adding 73,545 pounds of Native spearmint oil to the amount available for market, bringing the total available supply for the remainder of this marketing year up to approximately 114,511 pounds.

The Department, based on its analysis of available information, has determined that the salable quantity and allotment percentage for Native spearmint oil for the 1999–2000 marketing year should be increased to 1,309,915 and 64 percent, respectively.

This amended rule further relaxes the regulation of Native spearmint oil and will allow producers to meet market needs and improve returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 1999–2000 marketing year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of section 985.50 of the order. During its discussion of revising the 1999–2000 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

This increase in the 1999–2000 marketing year Native spearmint oil salable quantity and allotment percentage allows for anticipated market needs for this class of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

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

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

There are 7 spearmint oil handlers subject to regulation under the marketing order and approximately 119 producers of Scotch spearmint oil and 105 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 25 of the 119 Scotch spearmint oil producers and 7 of the 105 Native spearmint oil producers would be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm would, thus, have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil producing farms would fall into the category of large businesses.

Small spearmint oil producers represent a minority of farming operations and are more vulnerable to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the resources to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because of stronger incomes from alternate crops which could support the operation for a period of time. Despite the advantage larger producers may have, increasing the Native salable quantity and allotment percentage will help both large and small producers by improving returns.

This rule amends an interim final rule that was published in the **Federal Register** on February 10, 2000 (65 FR 6528). That rule increased the salable quantity by 102,311 pounds from 1,125,755 pounds to 1,228,066 pounds, and the allotment percentage by 5 percent from 55 percent to 60 percent. This amended interim final rule increases the salable quantity an additional 81,849 pounds from 1,228,066 pounds to 1,309,915 pounds, and the allotment percentage an additional 4 percent from 60 percent to 64 percent for Native spearmint oil for the 1999–2000 marketing year. This rule relaxes the regulation of Native spearmint oil and will allow producers to meet market needs and improve returns.

The Committee considered alternatives to the 4 percent increase based on projections and historical data available at the meeting. Generally, spearmint oil producers and buyers attending the meeting recommended that the Native spearmint oil salable quantity be increased by at least an additional 55,000 pounds. The Committee reached its recommendation to increase the Native spearmint oil salable quantity by an additional 81,849 pounds and the allotment percentage by 4 percent after careful consideration of all available information, and believes that the level recommended will achieve the objectives sought. Without the increase, the Committee believes the industry will not be able to meet market needs. By recommending a greater increase than the market might otherwise demand, the Committee believes that any further unanticipated

demand for Native spearmint oil during the remainder of the marketing year will be satisfied.

As of February 23, 2000, approximately 40,966 pounds of Native spearmint oil was available for market. During the past 5 years, the average sales of Native spearmint oil from March 1 to May 31 totaled 75,586 pounds, while the average sales for the period June 1 through February 29 totaled 1,087,385 pounds. The Far West spearmint oil industry has sold approximately 1,282,150 pounds of Native spearmint oil through February 23, 2000. This action has the effect of adding 73,545 pounds of Native spearmint oil to the amount available for market, bringing the total available supply for the remainder of this marketing year up to approximately 114,511 pounds.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Finally, the Committee's meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including that contained in the prior proposed and final rules in connection with the establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1999–2000 marketing year, the prior interim final rule increasing the 1999–2000 marketing year Native spearmint oil salable quantity and allotment percentage, the Committee's recommendation and other available information, it is found that to revise § 985.218 to change the salable quantity and allotment percentage for Native spearmint oil, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a revision to the salable quantity and allotment percentage for Native spearmint oil for the 1999–2000 marketing year. A 30-day comment period is provided. Thirty days is deemed appropriate because this rule increases the quantity of Native spearmint oil that may be marketed during the marketing year ending on May 31, 2000. Additionally, the current quantity of Native spearmint oil available for market may not be adequate to satisfy market needs for the remainder of the marketing year. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Native spearmint oil that may be marketed during the marketing year which ends on May 31, 2000; (2) the current quantity of Native spearmint oil may be inadequate to meet demand for the remainder of the season, thus making the additional oil available as soon as is practicable is beneficial to both handlers and producers; (3) the Committee unanimously recommended this change at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 985.218 is amended by republishing the introductory text and revising paragraph (b) to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 985.218 Salable quantities and allotment percentages—1999—2000 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1999, shall be as follows:

* * * * *

(b) Class 3 (Native) oil—a salable quantity of 1,309,915 pounds and an allotment percentage of 64 percent.

Dated: March 21, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–7333 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 212, 240, 245, 274a, and 299

[INS No. 1963–98; AG Order No. 2294–2000]

RIN 1115–AF33

Adjustment of Status for Certain Nationals of Haiti

AGENCY: Immigration and Naturalization Service, Justice, and Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This rule implements section 902 of the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) by establishing procedures for certain nationals of Haiti who have been residing in the United States to become lawful permanent residents of this country. This rule allows them to obtain lawful permanent resident status without applying for an immigrant visa at a United States consulate abroad and waives many of the usual requirements for this benefit.

DATES: This final rule is effective March 24, 2000.

FOR FURTHER INFORMATION CONTACT: *For matters relating to the Immigration and Naturalization Service:* Suzy Nguyen, Adjudications Officer, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW, Room 3214, Washington, DC 20536, telephone (202) 514–5014. *For matters relating to the Executive Office for*

Immigration Review: Chuck Adkins-Blanch, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

What are the Basic Provisions of Section 902 of HRIFA and the Interim Regulations Published on May 12, 1999?

On October 21, 1998, the President signed into law a Fiscal Year 1999 Omnibus Appropriations Act, Public Law 105–277 (112 Stat. 2681). Division A, title IX of that statute, the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), contained a provision, section 902, that allows certain nationals of Haiti to adjust their status to that of lawful permanent resident. On May 12, 1999, the Department of Justice (Department) published an interim rule, with requests for comments, that implemented section 902 of HRIFA. *See* 64 FR 25756.

Section 902 of HRIFA provides that the Attorney General shall adjust the status of certain Haitian nationals who are physically present in the United States to that of lawful permanent resident. In order to be eligible for benefits under HRIFA, an applicant must:

- Be a national of Haiti who was present in the United States on December 31, 1995;
- Have been physically present in the United States for a continuous period beginning not later than December 31, 1995, and ending not earlier than the date the application for adjustment is filed (not including any absence or absences amounting to 180 days or less in the aggregate);
- Properly file an application for adjustment before April 1, 2000;
- Be admissible to the United States under all provisions of section 212(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a), except those provisions specifically excepted by HRIFA; and
- Fall within one of the five classes of persons described in section 902(b)(1) of HRIFA.

The five classes described in section 902(b)(1) of HRIFA are:

(1) Haitian nationals who filed for asylum before December 31, 1995;

(2) Haitian nationals who were paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest;

(3) Haitian national children who arrived in the United States without parents and have remained without parents in the United States since such arrival;

(4) Haitian national children who became orphaned subsequent to arrival in the United States; and

(5) Haitian children who were abandoned by their parents or guardians prior to April 1, 1998, and have remained abandoned since such abandonment.

How Many Comments Were Received from Interested Parties in Response to the Interim Rule?

A total of 46 comments were received during the comment period. Commenters included Members of Congress, the mayor of a major city, representatives of a number of nongovernmental organizations, private attorneys, and other interested individuals. The Department appreciates the contributions of all individuals and groups who submitted comments.

What Comments Were Submitted and how is the Regulation Being Changed as a Result?

The issues raised by the commenters generally fell into 17 areas:

1. Issues Pertaining to Eligibility Under the Statute, but not Related to Immigrant Visa Waivers

A number of commenters requested that the Department extend the time period for submission of applications by principal applicants beyond the March 31, 2000, deadline set by statute. Such action would require new legislation, as it is clearly beyond the rulemaking authority of the Department.

Other commenters, recognizing that such change would exceed the Department's authority, requested that the Department not reject any applications as improperly filed during the final 30 days of the filing period because of a lack of documentation to establish eligibility. In light of the relatively short filing period, the Department finds this suggestion to be both reasonable and within its rulemaking authority. Accordingly, 8 CFR 245.15(c)(2) has been revised to provide that an Application to Register Permanent Residence or Adjust Status (Form I–485) submitted to either the Nebraska Service Center or the Immigration Court by a principal applicant seeking adjustment of status under HRIFA will not be rejected as improperly filed as long as it has been properly completed and signed by the applicant, identifies the applicant as a HRIFA principal applicant, and is accompanied by either the correct fee or a request for a fee waiver.

Some commenters felt that any Haitian who entered the United States prior to December 31, 1995, or who has been living in the United States since December 31, 1995, and any family members of such an individual, should be allowed to adjust his or her status to that of permanent resident. Although the Department understands the desire of the commenters to have the benefits of permanent residence extended to as many persons as possible, the suggestion is contrary to the statute, which requires that principal applicants fall within one of the five categories set forth above, be admissible to the United States, and meet all other statutory requirements. Accordingly, this suggestion cannot be adopted.

Some commenters wanted the regulations to provide that upon being granted lawful permanent residence, any HRIFA applicants who arrived in the United States after being paroled from the U.S. Naval Base at Guantanamo Bay, Cuba (Guantanamo Bay), would immediately become eligible to apply for United States citizenship. This suggestion cannot be adopted because the Act specifically requires an alien to reside in the United States for a specific period ''after being lawfully admitted for permanent residence.'' See Sec. 316(a)(1) of the Act, 8 U.S.C. 1427(a)(1). In the rare instances in which the Immigration and Naturalization Service (Service or INS) has recorded the date of admission for permanent residence as other than the actual date the application for such status was granted, it has only done so in accordance with explicit statutory authority.

Some commenters suggested that the regulations provide that any Haitian national who entered the United States prior to December 31, 1995, and who applied for asylum prior to December 31, 1997, should be eligible for adjustment under HRIFA. This suggestion is contrary to statute and beyond the rulemaking authority of the Department; it therefore cannot be adopted.

Finally, some commenters suggested that any asylum application that was mailed to the Service by December 31, 1995, but rejected as not properly filed, be considered to have been timely filed for HRIFA purposes. Congress could have opened the category to those who ''filed or attempted to file'' the application, or more simply to those who ''submitted'' the application. Instead, Congress required that the applicant have ''filed for asylum before December 31, 1995,'' in order to fall

within this category. Accordingly, the Department will consider only those asylum applications that were properly filed by the deadline established by statute. The Service's long-standing regulation, 8 CFR 103.2(a)(7), which concerns the proper filing of petitions, will not be revised. The suggestion will not be adopted.

2. Issues Pertaining to Eligibility Under the Statute and Related to Immigrant Visa Waivers

A number of commenters suggested that the Department either automatically waive those grounds of inadmissibility relating to medical conditions (especially HIV/AIDS infection) and fraud violations, or provide a more generous waiver provision such as that accorded to refugees and asylees adjusting status to lawful permanent residence under section 209 of the Act. 8 U.S.C. 158.

Section 902(a)(1)(B) of HRIFA states that, in order for the Attorney General to grant permanent residence under HRIFA, the applicant must be admissible to the United States. The specific grounds under which an alien may be found inadmissible to the United States are set forth in section 212(a) of the Act. 8 U.S.C. 1182(a). While HRIFA provides that five of these specific grounds of inadmissibility shall not apply to HRIFA applicants, it does not exempt them from the grounds pertaining to either inadmissibility under medical grounds, which is discussed in section 212(a)(1)(A), 8 U.S.C. 1182(a)(1)(A), or inadmissibility under grounds pertaining to misrepresentation, which is discussed in section 212(a)(6)(C), 8 U.S.C. 1182(a)(1)(C). Without statutory authority to waive grounds of inadmissibility, the Attorney General may not grant permanent residence to an inadmissible alien.

The statutory authority to grant waivers of medical grounds of inadmissibility is contained in section 212(g) of the Act, 8 U.S.C. 1182(g), and the authority to grant waivers of grounds of inadmissibility pertaining to misrepresentation is contained in section 212(i) of the Act. 8 U.S.C. 1182(i). Both of these sections set forth waiver eligibility criteria mandating that, among other things, the applicant have a qualifying relative who is a citizen or lawful permanent resident of the United States. Unfortunately, many HRIFA applicants who are inadmissible under section 212(a)(1) or section 212(a)(6)(C) of the Act do not have such qualifying relatives, and are therefore ineligible for these waivers.

Some commenters suggest that the authority contained in section 209 of the Act, 8 U.S.C. 1159, enables the Department to grant waivers of inadmissibility to HRIFA applicants. In so doing, a number of them quote a portion of paragraph (c) of that section. The entire paragraph provides:

> (c) The provisions of paragraphs (4), (5), and (7)(A) of section 1182(a) of this title shall not be applicable to any alien seeking adjustment of status *under this section* [i.e., section 209 of the Act], and the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) *with respect to such an alien* for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

8 U.S.C. 1159(c) (emphasis added).

When read in its entirety, it is clear that the waiver provision contained in section 209(c) of the Act applies only to aliens who are adjusting status under that section, not to aliens applying for adjustment of status under other provision of law, including HRIFA. The Department does not have the statutory authority to make this change. Accordingly, this suggestion cannot be adopted.

3. Other Waiver Issues

An applicant who is able to meet the statutory requirements set forth in sections 212(g) and 212(i) of the Act for grounds of inadmissibility pertaining to a medical condition or to fraud or willful misrepresentation must also show that his or her case warrants approval as a matter of discretion. In exercising such discretionary authority, adjudicating officers and immigration judges must take into account all factors—whether positive and negative—bearing on the case, and determine which factors carry significant weight and which do not.

A number of commenters have requested that in adjudicating the waiver application, the adjudicating officer or immigration judge take into account certain factors pertaining to the manner of the applicant's arrival in the United States or to conditions in the applicant's homeland. Specifically, commenters requested that for persons who were paroled into the United States from Guantanamo Bay for the purpose of receiving treatment of an HIV or AIDS condition, the fact that their arrival in the United States was the direct result of a government decision to provide such treatment should be viewed as a significant positive factor. Likewise, with regard to those applicants who used counterfeit documents to travel from Haiti to the United States, many commenters asked that the Department take into consideration the general lawlessness and corruption that was widespread in Haiti at the time of the alien's departure, the difficulties in obtaining legitimate departure documents at that time, and other factors peculiar to Haiti during that period that may have induced the alien to commit fraud or make willful misrepresentations. Although these factors would probably have been taken into account by the adjudicating officer or immigration judge regardless of the inclusion or exclusion of any specific language in the regulations, the Department feels that the inclusion of such language in the final rule will facilitate a general understanding of the importance of these factors in making the discretionary decision, and the suggestion has been adopted.

4. The Fee for Filing an Application

Some commenters requested that the Department provide a reduced fee level for families filing two or more applications for adjustment of status under the HRIFA program.

The fees charged under the HRIFA program are the same as those charged all other adjustment applicants and (on an individual case basis) the regulations already allow persons who are unable to pay the specified fees to request a waiver of the filing fee. Upon consideration of all factors, it was determined that it was not appropriate to provide a reduced fee level for HRIFA applicants in general.

5. Documentation in General

A number of commenters made suggestions regarding the documentation required for proof of eligibility and the manner and timeframe in which that documentation is to be submitted. Some commenters suggested that the regulations should not require submission of proof of unavailability of primary evidence (*e.g.,* a birth certificate) before accepting secondary evidence (*e.g.,* a baptismal record or a consistent prior claim). Conversely, other commenters suggested that the standard should call for the submission of the ''best evidence available.'' In considering applications and petitions for benefits under the Act, the Department's policy has generally been that the applicant should submit, and the adjudication should be based on, the best evidence available. In determining whether a particular type of evidence is generally available from foreign countries, the Department is guided by the information contained in Volume 9, Part IV, Appendix C of the Department of State's Foreign Affairs

Manual (FAM), which reports that birth certificates, marriage records, divorce records, death certificates, and adoption certificates are all generally available from Haiti. This is not to say, as it could be said about any country in the world, that in an individual case, a particular record may not have become lost or destroyed, or be otherwise unavailable. For this reason, the Department requires an applicant to submit proof of the unavailability of primary documentation from Haiti before considering secondary evidence. In short, the only way of knowing that secondary evidence is the ''best evidence available,'' and is therefore acceptable documentation, is to first establish that the primary evidence is unavailable. However, with regard to applications for adjustment of status under HRIFA, there is a very significant factor that complicates the application of the ''best evidence available'' standard: the March 31, 2000, HRIFA deadline for the filing of applications by principal applicants. Because of this deadline, the Department has determined that it is best to temper this standard so as to allow applicants to file for adjustment of status using secondary evidence as long as they also submit evidence that they have requested the primary evidence from an official recordkeeper (*e.g.,* the Haitian National Archives). This approach will avoid the risk of persons being unable to apply for adjustment under HRIFA, while at the same time ensuring the integrity of the documentation. In instances in which the primary documentation arrives prior to the applicant's interview with an immigration officer or hearing before an immigration judge, the applicant would present the primary documentation at such interview or hearing. Where the documentation does not arrive prior to the interview or hearing, the interviewing officer or presiding judge would make a determination whether to make a decision based on the evidence available or to continue the case until the primary documentation arrives.

Some commenters were under the mistaken impression that the regulations, *see, e.g.* 8 CFR 245.15(i), always require that a Form I–94 be submitted as proof of entry. If the alien is in possession of the Form I–94, he or she should submit it, but if the alien never received or lost the Form I–94, it cannot be submitted. Where it is crucial that the applicant establish the date of arrival, as with children who arrived without parents, secondary documents may be submitted (such as transportation company records or an affidavit) in lieu of a missing or nonexistent Form I–94. The regulations have been amended to clarify this point. However, the applicant is still required to meet the requirements set forth in 8 CFR 245.15(i) pertaining to documenting when the applicant's physical presence in the United States began.

Some commenters suggested that the Department allow applicants to submit a list of documents already known to be in their Service files. While the regulations already contain this provision, the relevant provision in 8 CFR 245.15(m) has been revised to eliminate possible confusion on this issue.

6. Documenting Haitian Nationality

A number of commenters felt that it was not reasonable for the Department to require applicants under HRIFA to submit evidence of nationality. Many felt that any ''evidence'' of nationality already contained in the alien's file (including the applicant's prior claims of Haitian nationality) should be more than sufficient to prove that the applicant is Haitian. Additionally, some commenters stated that it is unreasonable to require the applicant to submit evidence of the unavailability of a document before the Service or Immigration Court will accept secondary evidence in lieu of that document. Finally, some commenters expressed concerns that children born in Guantanamo Bay of Haitian parents would be unable to document either Haitian or Cuban nationality.

It is important to note that the submission of evidence of nationality with the application for adjustment is a standard requirement for all applicants for adjustment and not a special requirement placed upon applicants under HRIFA. Likewise, it is standard practice to require evidence of the unavailability of a document of record before considering secondary evidence. (As previously stated, the Department of State's FAM reports that such documents are generally available in Haiti.) Furthermore, files that were created upon an alien's arrest or submission of an application for benefits may contain no documentary evidence of nationality, but may refer to the alien's (perhaps self-serving) statement of nationality. Despite some commenters' contention to the contrary, while rare, it is not unheard of for a non-Haitian alien to falsely claim to be Haitian when it is to his or her advantage. Accordingly, every prior claim to Haitian nationality cannot automatically be presumed to be valid.

However, even considering all of these factors, the Department is willing to concede that, in light of the relatively short filing period provided in the statute, it will be difficult—if not impossible—for many bona fide applicants to obtain the normally required documentation in time to file an application for adjustment before the March 31, 2000, deadline. Accordingly, the Department is making a number of changes to the regulation that it believes will significantly alleviate, if not eliminate, this problem.

First, as previously stated, the regulations will now allow an applicant to file the application without the birth record being included in the application package, if the applicant presents evidence that he or she is attempting to obtain the birth record. Once the birth record has been received, such applicant would present it at his or her interview before a Service officer or hearing before an immigration judge.

Second, the regulations will allow the Service or Immigration Court to consider secondary evidence of nationality, if the applicant submits evidence that he or she has unsuccessfully attempted to obtain the standard documentation. Such an unsuccessful attempt to obtain the standard documentation may be shown by submitting a photocopy of a letter from the applicant to the keeper of records requesting the document in question. If the primary evidence is received prior to the interview or hearing, the applicant can present it at that time; otherwise, the adjudicating officer or judge may make a determination based on the secondary evidence. The secondary evidence which may be taken into consideration could include baptismal and other religious records, passports, and evidence or statements already contained in the alien's Service file. However, it must also be noted that all determinations as to the weight and credibility to be given to the secondary evidence rest with the adjudicating officer or judge.

With regard to those children born in Guantanamo Bay, there are at least three methods by which an applicant could document his or her birth. First, the United States Naval authorities issued a certificate of live birth to the parents of each child born on that naval base. Second, the records of the Service would reflect the place of birth as being at Guantanamo Bay. Third, the records of the voluntary agency that assisted in the family's resettlement would also show that the applicant was born at the U.S. Naval Base at Guantanamo Bay. Any of these records could be used in support of an application for adjustment under HRIFA.

7. Documenting Presence in the United States on December 31, 1995

Some commenters contend that the statutory requirement contained in section 902(b)(1) that limits the benefits of HRIFA to nationals of Haiti who were ''present in the United States on December 31, 1995,'' also applies to those who had been present in the United States at some time before that date but had left and were not here on that specific date. This contention is based on the commenters' interpretation of the requirement in section 902(b)(2) of HRIFA that the applicant must have been physically present in the United States for a continuous period beginning not later than December 31, 1995, but allows for absences of up to 180 days in the aggregate during that period. The commenters interpret the phrase ''beginning not later than December 31, 1995,'' as applying not only to the period of continuous presence, but also to the absences. This would have been a logical interpretation if section 902(b)(1) of HRIFA had allowed applicants to have been present ''on or before December 31, 1995,'' but it does not. The only way to read both sections in concert is that persons who departed prior to December 31, 1995, and were not physically present on that date are ineligible for benefits under HRIFA as principal applicants.

8. Documenting Presence in the United States Since December 31, 1995

Many commenters were concerned that the rough guideline for documenting continuity of presence (one document for each 90-day period) would be impossible for many bona fide applicants to meet due to cultural norms unique to Haitians. Others contended that due to other factors unique to Haitians, such as political, financial and geographical constraints, it is unlikely that any Haitians departed from the United States and returned since December 31, 1995, and that even a rough guideline of one document for each 90 days is excessive. A few commenters argued that the Department should provide a more generous guideline of one document for each 180 days, since the statute allows applicants to have been outside the United States for up to 180 days without breaking continuity of presence.

Because the statute allows an applicant to be outside the United States for up to 180 days *in the aggregate* without breaking continuity of presence, not absences of up to 180 days each, the Department finds that the argument that the guideline should be set at 180 days is without merit. However, the Department has determined that the guideline that had been intended to ease the burden on applicants by assisting them in gauging how much documentation to submit has instead become a hindrance that may result in some applicants believing that, without a certain minimum amount of documentation, they are ineligible to apply for or receive the benefit of adjustment of status under HRIFA. Accordingly, the guideline is being removed from the regulations and applicants should simply submit sufficient documentation to satisfy the adjudicating officer or immigration judge that they have maintained continuous presence in the United States within the meaning of the statute. The adjudicating officer or immigration judge retains the right to request additional documentation should the evidence submitted by the applicant prove insufficient to meet his or her burden of proof.

9. Definition of the Term ''Parole''

Several commenters suggested that all Haitians released from Service custody before December 31, 1995, including those released on bond or on their own recognizance pursuant to section 242(a)(1) of the Act, 8 U.S.C. 1252(a), as it was in effect at that time, should qualify as ''parolees'' under HRIFA. In support of this suggestion, these commenters cited an April 19, 1999, Service policy memorandum. That memorandum concerned the eligibility of certain Cuban nationals for adjustment of status under the Cuban Adjustment Act, despite their having arrived at a place other than a designated port-of-entry. It has no impact on the eligibility of a person seeking to adjust status under HRIFA as a Haitian national who was paroled in the United States prior to December 31, 1995. The April 19, 1999, memorandum provided in pertinent part that the ''release of an *applicant for admission* from custody [pursuant to *section 236 of the Act*], without resolution of his or her admissibility, is a parole.'' (emphasis added.) The release from custody of someone other than an applicant for admission (*e.g.*, an overstay) does not constitute a parole. In the HRIFA context, an alien who had entered the United States without inspection, was detained by the Service, and was later released prior to December 31, 1995, cannot be seen as having been paroled into the United States because the alien was not an applicant for admission at the time of his or her release. The treatment of aliens present without inspection as applicants for admission was introduced to the immigration laws as a result of the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) in September 1996. These statutory reforms applied prospectively only. *See* IIRIRA section 309(c)(1). Accordingly, this suggestion will not be adopted.

10. Issues Pertaining to Applications Submitted by Children

A number of commenters felt that the Department's interpretation of ''child without parents in the United States'' was too restrictive and undercut the legislative intent. Others mistakenly believed that the Department adopted this position in order to combat possible fraud. In fact, the Department had simply taken the common meaning of the phrase since no definition was provided by the statute. According to the commenters, the focus should be on whether there has been a sustainable parent-child relationship between the child and his or her parents in the United States. In other words, who has or has had parental control over the child since his or her arrival into the United States? The Department agrees that this interpretation better reflects the legislative intent behind the provisions concerning children without parents. Therefore, the regulations have been amended by placing commas before and after the phrase ''without parents'' in 8 CFR 245.15(b)(1)(iii)(A).

A number of commenters felt that the regulations unnecessarily and onerously require children to show proof of their manner of arrival. Some commenters were under the mistaken impression that the regulations required that a Form I–94 be submitted in all cases. Where an applicant must establish his or her date of arrival, as with children who arrived without parents, the Form I–94 should be submitted whenever possible. However, as explained earlier, if the Form I–94 is not available, secondary documents may be submitted instead. In the case of a child arriving without parents, the secondary evidence may include the child's declaration which may be supported by other documentation (*e.g.*, his or her attendance record at school shortly after the claimed date of arrival). The regulations have been amended to clarify this point.

A number of commenters made suggestions regarding the documentation and level of proof required to prove eligibility as an orphaned or abandoned child. Some commenters suggested that an applicant's declaration of orphanage should be sufficient proof of orphanage or abandonment. Several commenters wanted secondary evidence to be

accepted as proof of orphanage or death of parents (*e.g.*, declarations, news articles, and publications). Other commenters suggested that the Department should allow any probative evidence which might be submitted to state, local, or other authority to establish orphanage or abandonment. The Department agrees that, where primary evidence (*e.g.*, official state or court documents) is unavailable, secondary evidence may be submitted to prove orphanage. Accordingly, the regulations have been modified to reflect many of these suggestions.

A number of commenters felt that a broader and more general definition of orphan should be used. Some commenters wanted to include as an orphan a child who has been irrevocably released by his or her sole or surviving parent who is unable to provide support. This is particularly relevant with regard to Haitian children who have had one of their parents disappear due to the actions of the former government of Haiti or due to tragedy at sea. The Department agrees and has so amended the regulation at § 245.15(a). The regulation now allows an otherwise eligible child to qualify for to qualify for classification as an orphan under section 902(b)(1)(C)(ii) of HRIFA if (1) the child has lost one parent through death or through disappearance, (2) competent Haitian authorities have certified that parent to be presumed dead, (3)the sole remaining parent is incapable of providing the proper care, and (4) the sole remaining parent has, in writing, irrevocably released the child for immigration to the United States. However, this amended regulation pertains only to applications filed under HRIFA and has no bearing on applications or petitions filed under the Act, such as petitions for classification under section 101(b)(1)(F) of the Act, where the surviving parent provision only pertains if the other parent is deceased.

One commenter believed that HRIFA should not be read as limiting orphans to those who lost their parents while under 21 years old. While, by common definition, the term ''orphan'' only applies to a child, and not to an adult, who has lost his or her parents, section 902(b)(1)(C) of HRIFA includes a unique set of qualifications on applicants seeking status based on orphanage. Those qualifications provide that the applicant must have been unmarried and under 21 years old at the time of his or her arrival in the United States and on December 31, 1995, and that he or she ''became orphaned subsequent to arrival in the United States.'' Because it is possible for someone who became 21 years old after December 31, 1995, and was later orphaned to still meet the language of the statute, the regulations will be amended in this regard. However, this amended regulation pertains only to applications filed under HRIFA and has no bearing on applications or petitions filed under the Act.

Many commenters felt that the provision for abandoned children should be guided by the best interest of the child. A number of commenters wanted the Department to accept a broader array of evidence, besides official state, local, or court records, to prove the issue of abandonment. These suggestions include school records and declarations by the child (or Service records) indicating nonresidence or nonrelationship with the parents. One commenter suggested that if a child has been left by his or her parents with a relative, that should be sufficient to constitute abandonment along with notarized statements stating such. Other commenters wanted to allow any probative evidence which might be submitted to state, local, or other authority to establish abandonment. Several commenters suggested that runaway children should be considered abandoned, especially where the child ran way due to the home environment. A number of commenters urged the Department to adopt the standard of abandonment as defined by the law in Florida, where, if the parent or guardian of a child ''makes no provision for the child's support and makes no effort to communicate with the child, * * * [the] situation is [deemed] sufficient to evince a willful rejection of parental obligations.'' F.S. 1997, Sec. 39.01. Other commenters suggested that the guidelines for abandonment established by the individual state having jurisdiction over the child should be adopted. The Department agrees that a broader category of evidence to prove abandonment should be allowed. Accordingly, the Department will apply the laws governing abandonment established by the individual state where the child resides, or resided at the time of the abandonment. The regulations have been amended to reflect this change.

A number of commenters wanted the Department to allow a dependent (of a HRIFA principal) to qualify for HRIFA benefits if he or she was a child on the date of HRIFA's enactment (October 21, 1998), or, alternatively, to toll the child's age as of October 21, 1998, until the date when his or her adjustment application is adjudicated. The Department will not accommodate this request. The Department has consistently held that an applicant must be eligible for the benefit being sought at the time of adjudication of the application, not on some prior date. *See, Matter of Hernandez-Puente,* 20 I & N Dec. 335, 337 (BIA 1991) (citing cases). The Department reaffirms this interpretation that benefits such as adjustment cannot be granted nunc pro tunc, which is essentially what the commenters have suggested.

11. Local Police Clearances

One commenter requested that the regulations provide a general exemption from the local police clearance requirement for persons who live or have lived in locations where the local authorities have made a blanket decision not to issue such clearances for immigration purposes, insofar as it relates to time periods when the applicant resided in that locale. The commenter listed New York City as an example of such a location. In the interest of reducing unnecessary burdens on both the applicants and on the local authorities, this suggestion has been adopted.

12. Reinstatement of Removal

Some persons expressed concerns about the applicability of section 241(a)(5) of the Act. 8 U.S.C. 1231. This section provides that:

(5) *Reinstatement of removal orders against aliens illegally reentering.* If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act [chapter], and the alien shall be removed under the prior order at any time after the reentry.

In versions codified under the United States Code, the final sentence refers to any relief under ''this chapter'' instead of ''this Act.'' This difference has resulted in some persons believing that the relief which affected persons are barred from seeking is only that relief provided under section 241 of the Act, not relief provided under other sections of the Act. A brief explanation is in order.

The language of HRIFA, as enacted by Congress, is the official text of the Act. When the laws enacted by Congress are codified in the U.S. Code, that codification is not ''positive law.'' The titles of the U.S. Code are organized into ''chapters,'' and so when an Act of Congress is codified it is referred to as a ''chapter'' of the Code. The

Immigration and Nationality Act is codified as Chapter 12 of Title 8 of the U.S. Code. Accordingly, the Immigration and Nationality Act provides that an alien subject to section 241(a)(5) of the Act is barred from any relief provided under any provision of the Act.

Some commenters contend that section 241(a)(5), which was added to the Act by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104–208, 110 Stat. 3546, applies only to an alien ordered removed from the United States in post-IIRIRA proceedings, and not to an alien ordered excluded and deported, or ordered deported, from the United States in pre-IIRIRA proceedings. These commenters fail to take into account section 309(d)(2) of IIRIRA which states that ''any reference in law to an order of removal shall be deemed to include a reference to an order of exclusion and deportation or an order of deportation.'' *Id.* at sec. 309(d)(2).

Other commenters are under the impression that the Department holds that, when a person who departed the United States with an advance parole (Form I–512) returns to the United States, he or she is re-entering illegally and is subject to section 241(a)(5) of the Act. These commenters may be confusing advance parole with the separate requirement that someone who departs the United States while under an order of exclusion, deportation, or removal obtain permission to reapply for admission after removal, even if that person receives an advance parole document. (This ''permission to reapply'' issue is discussed in section 15 of this preamble on advance parole.) The Department would not, without more, view a return to the United States pursuant to an advance parole as an illegal reentry that would trigger the provisions of section 241(a)(5) of the Act.

13. Stay of Removal

Some commenters suggested that the regulation should provide for an automatic stay of removal which would take effect upon the filing of the application for adjustment of status under HRIFA. The Department considered this issue when drafting the interim rule and concluded that it would not be appropriate.

The Department feels that the Attorney General should have the flexibility of denying stay of removal requests where there are overriding negative factors. Since the statute calls for regulations which allow the HRIFA applicant to apply for (or ''seek'') a stay of deportation, removal, or exclusion, rather than to be granted or receive such stay, it is clear that the Department's interim regulation on this point is within the scope of what is intended by the statute. Accordingly, this suggestion will not be adopted.

14. Procedural Issues

A number of commenters made suggestions pertaining to the procedures by which the Department adjudicates HRIFA applications and otherwise administers the program. Some wanted the Service to make more frequent use of the interview waiver option and clarify unresolved issues through written correspondence. However, the decision on whether to waive an interview is made solely on a case-by-case basis and is wholly dependent on whether the adjudicating officer is satisfied that the application is approvable (or deniable) without further examination. In making his or her determination, the officer takes into consideration the information submitted by the applicant (which may include that submitted in response to a request for additional evidence from the Service), information contained in the alien's file, and all other pertinent information at the officer's disposal. The suggestion will not be adopted.

Some commenters wanted any applications postmarked by March 31, 2000, to be considered to have been properly filed, even if received at the Nebraska Service Center after that date. The Service has long held that an application may only be considered properly filed when it is received in a Service office, provided it is properly signed and executed and the requisite fee is attached. *See e.g.* 8 CFR 103.2(a)(7). The Department sees no reason to hold HRIFA applications to a different standard.

Finally, some commenters wanted the regulations to specify that the Service must provide notice of the cancellation of an order of exclusion, deportation, or removal, or a notice of termination of removal, deportation or removal proceedings, in addition to the notice of approval, whenever adjustment of status is granted to an alien who is subject to such order or in such proceedings. While the Service will endeavor to provide such notification, the fact remains that the regulations already provide that regardless of whether such notification is sent (or if sent, received), upon final approval of the application for adjustment of status under HRIFA by the Service or the Executive Office for Immigration Review (EOIR) (depending on which agency has jurisdiction), any pending order of exclusion, deportation or removal is canceled and any pending exclusion, deportation, or removal proceedings are terminated. Adding a regulatory requirement that separate notification to that effect be issued could only add confusion and raise questions as to whether the order had been canceled or the proceedings had been terminated.

15. Advance Parole for Persons Outside the United States

A number of interested parties submitted comments regarding procedures involved in authorizing parole for persons who either have applied for adjustment of status or wish to travel to the United States in order to apply for adjustment of status. Section 245.15(t)(1) of Title 8 of the Code of Federal Regulations sets forth procedures for persons who have already filed for adjustment of status and wish to depart from and return to the United States. Additionally, that provision sets forth procedures for otherwise eligible persons who are outside the United States and wish to be paroled into the country in order to file the application for adjustment of status. For purposes of clarity, these will be referred to as ''t-1 parole'' and ''t-2 parole'' in this discussion.

Some commenters wanted t-1 parole authorization to be automatic for all persons who apply for adjustment of status under HRIFA. Upon consideration, the Department finds that this suggestion is likely to create more problems than it would solve. Many applicants under the HRIFA program are not in possession of acceptable travel documents and encouraging them to travel without first obtaining advance parole is likely to result in increased difficulties at ports-of-entry and departure both here and abroad. If this suggestion were to be adopted, it would also be all but impossible to determine which returning applicants had filed bona fide applications and which had filed mala fide or frivolous ones. The lack of a recognized advance parole document would considerably exacerbate problems for the applicants, as well as for government and airline officials, and would inevitably result in bona fide applicants being stranded outside the country. The Department has decided not to adopt this suggestion.

Some commenters wanted the Department to extend the time during which the alien can travel to the United States after receiving an advance t-2 parole authorization beyond the current 60 days. The Department feels that under all but the most abnormal circumstances, a 60-day period should be sufficient for this purpose. The

Department also notes that if the recipient feels that he or she will need additional time to obtain travel documents and exit permits, he or she can request that the Service Officer-in-Charge in Port-au-Prince delay issuance of the advance parole document until a later date. Accordingly, this suggestion has not been adopted.

Some commenters wanted the 60-day t-2 parole issued upon the alien's arrival to be ''automatically extended'' upon the filing of the application for adjustment. This suggestion cannot be adopted for at least three reasons. First, technically, a parole is not extended, although at the completion of a parole, one option available to the district director having jurisdiction over the alien's residence in the United States is to reparole the alien if such action is warranted in accordance with the statutory requirements set forth in section 212(d)(5) of the Act. 8 U.S.C. 1182(d)(5). Second, the purpose of the t-2 parole is to allow the alien to file the application for adjustment of status under HRIFA, and that purpose has been accomplished once the alien files the application for adjustment. Any decision to reparole the alien would have to be made (by that district director) once the applicant for adjustment requests reparole through his or her local immigration office and presents his or her receipt for filing the application for adjustment at the Nebraska Service Center. Third, even if the other objections were overcome, the technology does not currently exist to provide for automatic reparole, and the cost of developing such technology would not be warranted by the relatively small number of persons who would benefit from it.

Some commenters wanted the regulations to extend the authority of the Director of the Nebraska Service Center to adjudicate advance t-2 parole requests. That authority currently expires on March 31, 2000. It must be noted that the authority to approve this type of parole request normally lies with the District Director in Mexico City for anyone in the Western Hemisphere, but not at a United States port-of-entry. The authority was extended to the Director of the Nebraska Service Center primarily because of the anticipated volume of requests under the HRIFA program. A decision will be made sometime during March 2000 as to whether both the Director of the Nebraska Service Center and the Director in Mexico City should have such authority, or if such authority should be vested solely with the District Director at Mexico City. Regardless of whether the authority of the Director of the Nebraska Service Center is extended beyond March 31, 2000, the District Director in Mexico City will continue to have such authority. It should also be noted that the Service can extend the authority of the Director of the Nebraska Service Center to issue such parole authorizations through an internal Service memorandum. It need not be done through the rulemaking process. *See* 8 CFR 2.1. However, should the authority of the Nebraska Service Center to issue such parole authorizations be extended, the Service will publish a notice to that effect in the **Federal Register**.

Finally, an explanation is in order regarding the effect of departure from the United States while under an order of exclusion, deportation, or removal, including situations in which the alien first obtains an advance parole authorization, Form I–512. A Form I–512 is a document which authorizes an immigration officer to parole the bearer into the United States upon inspection at a port-of-entry. It neither contains nor connotes any special benefits for the bearer at the point of his or her departure from the United States. Whenever an alien who is under an outstanding order of exclusion, deportation, or removal departs from the United States, he or she effects or executes that order. This is true regardless of whether he or she is in possession of an I–512 authorizing a parole upon his or her return. Once the exclusion, deportation, or removal order has been executed, an alien must apply for and be granted permission to reapply (Form I–212) before he or she embarks or reembarks for his or her return travel to the United States. Failure to obtain such permission results in the alien being inadmissible to the United States and, therefore, ineligible for adjustment of status in the United States.

16. Employment Authorization Documents

Some commenters felt that the Service should automatically extend the work authorization for persons who had been granted Deferred Enforced Departure (DED) under the Presidential directive to the Attorney General of December 23, 1997. That order allowed the Service to grant DED status, with work authorization, to eligible applicants until December 22, 1998. Shortly before December 22, 1998, the Department published a notice in the **Federal Register** which explained that although it could not extend the DED program itself, it was extending the validity of the affiliated Employment Authorization Documents (EADs) for another year (until December 22, 1999) to give the Department time to promulgate regulations and eligible applicants an opportunity to apply for both adjustment of status and new EADs (as adjustment applicants). The Service recently published a notice in the **Federal Register**, at 64 FR 71151, which re-extended the validity of these EADs until September 30, 2000. Because this matter has been addressed by separate action, it will not be addressed here.

17. Comments Relating to the Procedures of the Executive Office for Immigration Review.

Many commenters suggested that Haitians eligible for HRIFA relief should be permitted to administratively close their cases without the concurrence of the Service. Currently, those aliens in proceedings before the Immigration Court or Board of Immigration Appeals (Board) may move to have these proceedings administratively closed for the purpose of filing an application for adjustment under HRIFA with the Service; however, the Service must concur with the administrative closure of the case.

The Department has decided not to change this procedure because it is established law that has been applied to other types of proceedings and not just those involving HRIFA-eligible aliens. Administrative closure is a convenience that allows for the removal of a case from the calendar in appropriate situations. An immigration judge or the Board may not administratively close a case if it is opposed by either party. *See Matter of Lopez-Barrios,* 20 I & N Dec. 203, 204 (BIA 1990). The Department does not find that aliens applying for HRIFA are in a substantially different position from other aliens requesting administrative closure of their cases. Therefore, an exception to the rule is not warranted.

Two groups suggested that the interim rule limits motions to reopen an EOIR decision denying HRIFA relief after a failure to appear by confining the motions to current reopening and rescission standards. They argue that reopening and rescission standards for certain applicants with final exclusion and deportation orders are improper because aliens with pre-IMMACT 90 deportation cases or aliens in exclusion proceedings predating IIRIRA's fusion of exclusion and deportation are subject to the ''reasonable cause'' standard for reopening or rescission of a case before EOIR.

The Department chose to apply current rescission and reopening standards in this particular situation because it has created a new proceeding applicable exclusively to HRIFA-only relief. Rescission or reopening in 8 CFR

245.15(s)(4) refers to 8 CFR 245.15(s)(1), and only discusses the situation involving aliens with final orders who applied for adjustment of status under section 902 of HRIFA with the Service, were denied that relief by the Service, and were then referred to the Immigration Court on Form I–290C for adjudication of their eligibility for such relief. The rescission or reopening of proceedings under 8 CFR 245.15(s)(4) refers exclusively to the HRIFA-only proceeding and not the original deportation or exclusion proceeding. Accordingly, the standard for determining whether an alien is eligible for rescission or reopening under this subsection refers not to the original proceeding and the old standard, but rather to the new proceedings and the current standard. Because the Department created this new type of proceeding, it considered it appropriate to choose a standard consistent with recent reopening standards for removal proceedings put in place by Congress.

Are Any Other Changes Being Made to The Regulation?

Section 245.15(d)(4) has been revised to clarify that in establishing the relationship between a principal beneficiary and a dependent beneficiary, the standards of documentation set forth in 8 CFR 204.2 apply. No other changes are being made to the regulation, with the exception of minor editorial corrections.

It has come to the Department's attention that the application of current regulations (8 C.F.R. 103.2(a)(7)) and practice to HRIFA applications filed with fee waiver requests may inadvertently result in certain applicants later being deemed to have missed the application deadline due to no fault on the part of the applicant. Currently an application submitted with a fee waiver request is not considered properly filed and does not retain a receipt date until the fee waiver is granted. In cases where a fee waiver is denied, the application is returned to the applicant with instructions to resubmit the application with the appropriate fee at which time the application will be considered properly filed and will be assigned a receipt date. Thus, under current regulations and practice were the Service or Immigration Court to deny a request for a waiver of the HRIFA application fee after March 31, 2000, and return the application, the alien could not file another application with the fee because the filing deadline would have already passed. Given the statutorily mandated filing deadline of March 31, 2000, the Department believes that it would be appropriate to modify the regulations with respect to this group of cases to avoid a potentially harsh and irreversible result. Accordingly, the regulations are being amended to afford an applicant whose HRIFA fee waiver request is denied the opportunity to submit the required fee within 30 days of notice that the fee waiver request was denied and thereby maintain a timely filing date.

In addition, in a case over which the Board has jurisdiction, an application received by the Board before April 1, 2000, that has been properly signed and executed is considered to be filed before the statutory deadline without payment of the fee or submission of a fee waiver request. Upon remand by the Board, the payment of the fee or a request for a fee waiver is made upon submission of the application to the Immigration Court in accordance with 8 CFR 240.11(f). The regulations are being amended to afford an applicant whose HRIFA adjustment fee waiver request is denied the opportunity to submit the required fee within 30 days of the notice that the fee waiver request was denied. If the required fee is not paid within 30 days, the applicant will no longer be considered to have filed a timely HRIFA adjustment application.

Good Cause Exception

The Department's implementation of this final rule effective upon publication in the **Federal Register** is based upon the ''good cause'' exception found at 5 U.S.C. 553(d)(3). By statute, all HRIFA principal adjustment applicants must file their applications before April 1, 2000. Immediate implementation of this final rule is necessary to ensure that HRIFA applicants are able to avail themselves of the modifications made in this final rule as soon as possible before the end of the application period. Accordingly, delaying the effective date of this final rule for 30 days would be contrary to the public interest.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Attorney General has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact upon a substantial number of small entities. This rule allows certain Haitian nationals to apply for adjustment of status; it has no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This regulation 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 section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

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 United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988: Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

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 1 year, and 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.

Paperwork Reduction Act

The information collection requirement contained in this rule (Form I–485 Supplement C) has been revised. Accordingly, it has been submitted and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act. The changes to the form are effective with the issuance of this rule.

Plain Language in Government Writing

The President's June 1, 1998, Memorandum published at 63 FR 31885, concerning Plain Language in Government Writing, applies to this proposed rule.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visas, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 240

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR Parts 3, 212, 240, 245, 274a, and 299, which was published at 64 FR 25756 on May 12, 1999, is adopted as a final rule with the following changes:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

§ 212.17 [Amended]

2. Section 212.7 is amended by:

a. Removing the phrase ''§ 245.15(l)'' and adding in its place the phrase ''§ 245.15(t)'' in both the heading and the text of paragraph (a)(1)(iii); and by

b. Removing the phrase ''§ 245.15(l)(2)'' and adding in its place the phrase ''§ 245.15(t)(2)'' in paragraph (b)(2)(iv).

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

4. Section 245.15 is amended by:

a. Revising the definitions of the terms ''*Abandoned* and *abandonment*'' and ''*Orphan* and *orphaned*'' in paragraph (a);

b. Adding a new definition for the term ''*Sole remaining parent*'' at the end of paragraph (a);

c. Revising paragraph (b)(1)(iii)(A);

d. Revising paragraph (c)(2);

e. Revising paragraph (d)(4);

f. Adding two new sentences at the end of paragraph (e)(2);

g. Revising paragraph (h)(5);

h. Revising paragraph (j)(1);

i. Revising paragraph (k)(3)(i);

j. Revising paragraph (k)(3)(ii)(B);

k. Revising paragraphs (k)(4)(i) and (ii);

l. Revising paragraphs (k)(5)(i) and (ii);

m. Revising paragraph (m);

n. Amending the last sentence in paragraph (t)(2)(i) by removing the phrase ''paragraph (f)'' and adding in its place the phrase ''paragraph (h)''; and by

o. Amending paragraph (u)(2) by removing the phrase ''paragraph (l)(2)'' and adding in its place the phrase ''paragraph (t)(2)''.

The revised and added text reads as follows:

§ 245.15 Adjustment of Status of Certain Haitian Nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA).

(a) * * *

Abandoned and *abandonment* mean that both parents have, or the sole or surviving parent has, or in the case of a child who has been placed into a guardianship, the child's guardian or guardians have, willfully forsaken all parental or guardianship rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer these rights to any specific person(s).

* * * * *

Orphan and *orphaned* refer to the involuntary detachment or severance of a child from his or her parents due to any of the following:

(1) The death or disappearance of, desertion by, or separation or loss from both parents, as those terms are defined in § 204.3(b) of this chapter;

(2) The irrevocable and written release of all parental rights by the sole parent, as that term is defined in § 204.3(b) of this chapter, based upon the inability of that parent to provide proper care (within the meaning of that phrase in § 204.3(b) of this chapter) for the child, provided that at the time of such irrevocable release such parent is legally obligated to provide such care; or

(3) The death or disappearance, as that term is defined in § 204.3(b) of this chapter, of one parent and the irrevocable and written release of all parental rights by the sole remaining parent based upon the inability of that parent to provide proper care (within the meaning of that phrase in § 204.3(b) of this chapter) for the child, provided that at the time of such irrevocable release such parent is legally obligated to provide such care.

* * * * *

Sole remaining parent means a person who is the child's only parent because:

(1) The child's other parent has died; or

(2) The child's other parent has been certified by competent Haitian authorities to be presumed dead as a result of his or her disappearance, within the meaning of that term as set forth in § 204.3(b) of this chapter.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(A) Arrived in the United States without parents in the United States and has remained, without parents, in the United States since his or her arrival;

* * * * *

(c) * * *

(2) *Proper application.* The alien properly files an application for adjustment of status in accordance with this section, including the evidence described in paragraphs (h), (i), (j), and (k) of this section. For purposes of § 245.15 of this chapter only, an Application to Register Permanent Residence or Adjust Status (Form I–485) submitted by a principal applicant for benefits under HRIFA may be considered to have been properly filed if it:

(i) Is received not later than March 31, 2000, at the Nebraska Service Center, the Board, or the Immigration Court having jurisdiction;

(ii) Has been properly completed and signed by the applicant;

(iii) Identifies the provision of HRIFA under which the applicant is seeking adjustment of status; and

(iv) Is accompanied by either:

(A) The correct fee as specified in § 103.7(b)(1) of this chapter; or

(B) A request for a fee waiver in accordance with § 103.7(c) of this chapter, provided such fee waiver request is subsequently granted; however, if such a fee waiver request is subsequently denied and the applicant submits the require fee within 30 days of the date of any notice that the fee waiver request had been denied, the application shall be regarded as having been filed before the statutory deadline. In addition, in a case over which the Board has jurisdiction, an application received by the Board before April 1, 2000, that has been properly signed and executed shall be considered filed before the statutory deadline without payment of the fee or submission of a fee waiver request. Upon remand by the Board, the payment of the fee or a request for a fee waiver shall be made upon submission of the application to the Immigration Court in accordance with 8 CFR 240.11(f). If a request for a fee waiver is denied, the application shall be considered as having been properly filed with the Immigration Court before the statutory deadline provided that the applicant submits the required fee within 30 days of the date of any notice that the fee waiver request has been denied.

* * * * *

(d) * * *

(4) *Relationship.* The qualifying relationship to the principal alien must have existed at the time the principal was granted adjustment of status and must continue to exist at the time the dependent alien is granted adjustment of status. To establish the qualifying relationship to the principal alien, evidence must be submitted in accordance with § 204.2 of this chapter. Such evidence should consist of the documents specified in § 204.2(a)(1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter;

* * * * *

(e) * * *

(2) * * * In considering an application for waiver under section 212(g) of the Act by an otherwise statutorily eligible applicant for adjustment of status under HRIFA who was paroled into the United States from the U.S. Naval Base at Guantanamo Bay, for the purpose of receiving treatment of an HIV or AIDS condition, the fact that his or her arrival in the United States was the direct result of a government decision to provide such treatment should be viewed as a significant positive factor when weighing discretionary factors. In considering an application for waiver under section 212(i) of the Act by an otherwise statutorily eligible applicant for adjustment of status under HRIFA who used counterfeit documents to travel from Haiti to the United States, the adjudicator shall, when weighing discretionary factors, take into consideration the general lawlessness and corruption which was widespread in Haiti at the time of the alien's departure, the difficulties in obtaining legitimate departure documents at that time, and other factors unique to Haiti at that time which may have induced the alien to commit fraud or make willful misrepresentations.

* * * * *

(h) * * *

(5) *Police clearances.* If the applicant is 14 years old or older, a police clearance from each municipality where the alien has resided for 6 months or longer since arriving in the United States. If there are multiple local law enforcement agencies (e.g., city police and county sheriff) with jurisdiction over the alien's residence, the applicant may obtain a clearance from either agency. If the applicant resides or resided in a State where the State police maintain a compilation of all local arrests and convictions, a statewide clearance is sufficient. If the applicant presents a letter from the local police agencies involved, or other evidence, to the effect that the applicant attempted to obtain such clearance but was unable to do so because of local or State policy, the director or immigration judge having jurisdiction over the application may waive the local police clearance. Furthermore, if such local police agency has provided the Service or the Immigration Court with a blanket statement that issuance of such police clearance is against local or State policy, the director or immigration judge having jurisdiction over the case may waive the local police clearance requirement regardless of whether the applicant individually submits a letter from that local police agency;

* * * * *

(j) * * *

(1) *Evidence establishing presence.* Evidence establishing the continuity of the alien's physical presence in the United States since December 31, 1995, may consist of any documentation issued by any governmental or nongovernmental authority, provided such evidence bears the name of the applicant, was dated at the time it was issued, and bears the signature, seal, or other authenticating instrument of the authorized representative of the issuing authority, if the document would normally contain such authenticating instrument.

* * * * *

(k) * * *

(3) * * *

(i) Evidence, showing the date, location, and manner of his or her arrival in the United States, such as:

(A) A photocopy of the Form I–94 issued at the time of the alien's arrival in the United States;

(B) A copy of the airline or vessel records showing transportation to the United States;

(C) Other similar documentation; or

(D) If none of the documents in paragraphs (k)(3)(i)(A)–(C) of this section are available, a statement from the applicant, accompanied by whatever evidence the applicant is able to submit in support of that statement; and

(ii) * * *

(B) Evidence showing that the applicant's parents did not live in the United States with the applicant. Such evidence may include, but is not limited to, documentation or affidavits showing that the applicant's parents have been continuously employed outside the United States, are deceased, disappeared, or abandoned the applicant prior to the applicant's arrival, or were otherwise engaged in activities showing that they were not in the United States, or (if they have been in the United States) that the applicant and his or her parents did not reside together.

(4) * * *

(i) Evidence, showing the date, location, and manner of his or her arrival in the United States, such as:

(A) A photocopy of the Form I–94 issued at the time of the alien's arrival in the United States;

(B) A copy of the airline or vessel records showing transportation to the United States;

(C) Other similar documentation; or

(D) If none of the documents in paragraphs (k)(4)(i)(A)–(C) of this section are available, a statement from the applicant, accompanied by whatever evidence the applicant is able to submit in support of that statement; and

(ii) Either:

(A) The death certificates of both parents (or in the case of a child having only one parent, the death certificate of the sole parent) showing that the death or deaths occurred after the date of the applicant's arrival in the United States;

(B) Evidence from a State, local, or other court or governmental authority having jurisdiction and authority to make decisions in matters of child welfare establishing the disappearance of, the separation or loss from, or desertion by, both parents (or, in the case of a child born out of wedlock who has not been legitimated, the sole parent); or

(C) Evidence of:

(*1*) Either:

(*i*) The child having only a sole parent, as that term is defined in § 204.3(b) of this chapter;

(*ii*) The death of one parent; or

(*iii*) Certification by competent Haitian authorities that one parent is presumed dead as a result of his or her disappearance, within the meaning of that term as set forth in § 204.3(b) of this chapter; and

(*2*) A copy of a written statement executed by the sole parent, or the sole remaining parent, irrevocably releasing all parental rights based upon the inability of that parent to provide proper care for the child.

(5) * * *

(i) Evidence, showing the date, location, and manner of his or her arrival in the United States, such as:

(A) A photocopy of the Form I–94 issued at the time of the alien's arrival in the United States;

(B) A copy of the airline or vessel records showing transportation to the United States;

(C) Other similar documentation; or

(D) If none of the documents in paragraphs (k)(5)(i)(A)–(C) of this section are available, a statement from the applicant, accompanied by whatever evidence the applicant is able to submit in support of that statement; and

(ii) Either:

(A) Evidence from a State, local, or other court or governmental authority having jurisdiction and authority to make decisions in matters of child welfare establishing such abandonment; or

(B) Evidence to establish that the applicant would have been considered to be abandoned according to the laws of the State where he or she resides, or where he or she resided at the time of the abandonment, had the issue been presented to the proper authorities.

* * * * *

(m) *Secondary evidence.* Except as otherwise provided in this paragraph, if the primary evidence required in this section is unavailable, church or school records, or other secondary evidence pertinent to the facts in issue, may be submitted. If such documents are unavailable, affidavits may be submitted. The applicant may submit as many types of secondary evidence as necessary to establish birth, marriage, or other relevant events. Documentary evidence establishing that primary evidence is unavailable must accompany secondary evidence of birth or marriage in the home country. The unavailability of such documents may be shown by submission of a copy of the written request for a copy of such documents which was sent to the official keeper of the records. In adjudicating the application for adjustment of status under section 902 of HRIFA, the Service or immigration judge shall determine the weight to be given such secondary evidence. Secondary evidence may not be submitted in lieu of the documentation specified in paragraphs (i) or (j) of this section. However, subject to verification by the Service, if the documentation specified in this paragraph or in paragraphs (h)(3)(i), (i), (j), (l)(1), and (l)(2) of this section is already contained in the Service's file relating to the applicant, the applicant may submit an affidavit to that effect in lieu of the actual documentation.

* * * * *

PART 274A—CONTROL OF EMPLOYMENT OF ALIENS

5. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2; Pub. L. 101–410, 104 Stat 890, as amended by Pub. L. 104–34, 110 Stat 1321.

§ 274a.12 [Amended]

6. In § 274a.12, paragraph (c)(9) is amended in the second sentence by removing the words ''§§ 245.13(j) and 245.13(k) of this chapter'' and adding in its place the words ''§§ 245.13(j) and 245.15(n) of this chapter''.

§ 274a.13 [Amended]

7. In § 274a.13, paragraph (d) is amended in the first sentence by removing the words ''insofar as it is governed by §§ 245.13(j) and 245.15(k) of this chapter'' and adding in its place the words ''insofar as it is governed by §§ 245.13(j) and 245.15(n) of this chapter''.

PART 299—IMMIGRATION FORMS

8. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

9. Section 299.1 is amended in the table by revising the entry for Form ''I–485 Supplement C'', to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* *	*	* * * * *
I–485 Supplement C	12–01–99	HRIFA Supplement to Form I–485 Instructions.
* *	*	* * * * *

Dated: March 17, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–7204 Filed 3–21–00; 3:47 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 212, 240, 245, 274a and 299

[INS No. 1893–97; AG Order No. 2293–2000]

RIN 1115–AF04

Adjustment of Status for Certain Nationals of Nicaragua and Cuba

AGENCY: Immigration and Naturalization Service, Justice, and Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This rule implements section 202 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) by establishing procedures for certain nationals of Nicaragua and Cuba who have been residing in the United States to become lawful permanent residents of this country. This rule allows them to obtain lawful permanent resident status without applying for an immigrant visa at a United States consulate abroad, and waives many of the usual requirements for this benefit.

DATES: This final rule is effective March 24, 2000.

FOR FURTHER INFORMATION CONTACT: *For matters relating to the Immigration and Naturalization Service*—Suzy Nguyen, Adjudications Officer, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW, Room 3214, Washington, DC 20536, telephone (202) 514–5014; *For matters relating to the Executive Office for Immigration Review*—Chuck Adkins-Blanch, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

What Are the Basic Provisions of Section 202 of NACARA and the Interim Regulation Published on May 21, 1998?

The Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted as title II of the District of Columbia Appropriations Act, 1998, Public Law 105–100 (111 Stat. 2160, 2193), was signed into law on November 19, 1997. As amended by Public Law 105–139 (111 Stat. 2644), which was signed into law the same day, section 202 of NACARA allows certain Nicaraguan and Cuban nationals who are physically present in the United States to adjust status to that of lawful permanent resident. In order to be eligible for benefits under NACARA, an applicant must be a national of Nicaragua or Cuba; must be admissible to the United States under all provisions of section 212(a) of the Immigration and Nationality Act (Act), other than those provisions specifically excepted by NACARA; must have been physically present in the United States for a continuous period beginning not later than December 1, 1995, and ending not earlier than the date the application for adjustment is filed (not counting absences totaling 180 days or less); and must properly file an application before April 1, 2000. In addition, certain family members of NACARA beneficiaries are also eligible for adjustment of status under NACARA.

The interim regulation published in the **Federal Register** by the Department of Justice (Department) on May 21, 1998, explained the forms, supporting documentation, and process through which a principal applicant, or an applicant who is a dependent of a principal applicant, may apply for adjustment of status under section 202 of NACARA. It provided that an alien who is currently in exclusion, deportation, or removal proceedings may file his or her application with the immigration court, unless the immigration court administratively closes such proceedings for the specific purpose of allowing the alien to apply for adjustment before the Immigration and Naturalization Service (Service or INS). The regulation also added an eighth method to the seven contained in the statute for proving commencement of physical presence in the United States. Additionally, it explained the process through which a NACARA adjustment applicant may seek authorization to work in the United States or to travel outside of the country. Finally, the regulation provided a vehicle through which certain aliens who are outside the United States may seek authorization to be paroled into the country for the purpose of applying for adjustment of status.

How Many Comments Were Received From Interested Parties During the Comment Period?

There were 36 separate comments received from various organizations, individuals, and other interested parties. That number included three Members of Congress, one representative of a foreign government, numerous nongovernmental organizations, and several attorneys and law firms. Also included in that number are 2 petitions, 1 with 426 signatures and the other with 66 signatures, and 124 identical letters signed by the members of 1 organization, making a total of 649 individuals and organizations who participated in the public comment process. The Department wishes to thank all participants for their insightful comments.

What Were the Specific Comments and How Is the Department Amending the Regulation as a Result?

The issues raised by commenters generally fell into 14 areas, each of which will be discussed separately, as follows:

1. Treatment of an Ineligible Spouse or Child

A significant number of commenters expressed concern about the requirement that a spouse or child of a principal applicant be a national of Nicaragua or Cuba in order to qualify for the benefits of section 202 of NACARA. Some questioned whether the language of the statute specified that the dependent be a national of Nicaragua or Cuba, while others recognized that the language so specified, but felt that the agency has the authority to ''correct'' the language through regulation. Still other commenters suggested that the Department create a family unity program for ineligible dependents and provide them with a blanket waiver of section 212(a)(9)(B) of the Act (which creates a 3-year bar for aliens who have been unlawfully present for more than 180 days and a 10-year bar for those who have been unlawfully present for 1 year or more). While the Department is sympathetic to the problem faced by non-Nicaraguan, non-Cuban dependents, section 202(d)(1)(A) of NACARA clearly states that the alien spouse must be ''a national of Nicaragua or Cuba.'' While the courts have held that an agency has a certain amount of latitude in drafting implementing regulations if the statute is unclear on an issue, the agency has no such latitude where the statute is clear. Only a statutory change can redress the issue of eligibility for non-Nicaraguan and non-Cuban dependents. Likewise, a statutory change would be required to create a family unity program for ineligible dependents and to waive the provisions of section 212(a)(9)(B) of the Act. Accordingly, no changes are being made to the regulation on this point.

2. Other Statutory Issues

Some commenters wanted clarification in the regulation on whether sections 212(a)(6)(B), 240B(d), 241(a)(5) (and also by extension 212(a)(9)(C)), and ''the former section 242B'' of the Act applied to NACARA applicants. One party also requested information regarding the number of persons affected by section 241(a)(5) of the Act. Although incorporating a discussion of each of these provisions in 8 CFR 245.13 would unnecessarily complicate the regulation, we have decided to address them in this supplementary information.

Section 212(a)(6)(B) of the Act provides that if an alien failed to attend a removal hearing, he or she is inadmissible for a period of 5 years from his or her subsequent departure or removal. In order to be barred from adjusting status under NACARA, an alien would (1) have to fail to attend a removal hearing; (2) depart or be removed from the United States; (3) re-enter the United States; and (4) apply for adjustment under NACARA. If any of these four steps is missing, the alien would not be inadmissible under section 212(a)(6)(B) of the Act; if all four are present, he or she would be inadmissible and, therefore, ineligible for adjustment of status under section 202 of NACARA.

If an alien was permitted to depart voluntarily but failed to do so, he or she would be barred by section 240B(d) of

the Act from receiving benefits under certain specified provisions of the Act. Because a NACARA applicant would not be seeking benefits under one of the sections specified in section 240B(d) of the Act, section 240B(d) of the Act would not apply.

Section 241(a)(5) of the Act provides for the reinstatement of a removal order against any alien who illegally re-enters the United States after having been removed or after having departed voluntarily under an order of removal. It also bars any alien whose removal order has been reinstated from receiving any relief under the Act. An alien who has been previously deported is inadmissible for the applicable period set forth in the Act and may only overcome such inadmissibility by obtaining the applicable waiver of inadmissibility authorized under section 212(a)(9) of the Act (such waiver is more commonly referred to as permission to reapply for admission after deportation) before being granted adjustment of status (including adjustment under section 202 of NACARA). Because such a waiver is relief (from inadmissibility) under the Act for which an alien subject to reinstatement is ineligible, a previously deported alien who has re-entered the United States illegally at a time when his or her previous exclusion, deportation, or removal rendered him or her inadmissible to the United States is ineligible to adjust status under section 202 of NACARA. The Service does not know how many otherwise-eligible Nicaraguans and Cubans are barred from adjusting under section 202 due to the provisions of section 241(a)(5) of the Act, but judging solely from the volume of inquiries received on the issue, the number may be significant.

The issue of a previous exclusion, deportation, or removal also arises in connection with section 212(a)(9)(C)(i)(II) of the Act, which provides that:

> Any alien who * * * has been ordered removed under section 235(B)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

Section 202(a)(2) of NACARA specifically provides that ''[a]n alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act may, notwithstanding such order, apply for adjustment of status under paragraph (1).'' Accordingly, merely having been *ordered* removed does not make an alien inadmissible to the United States and, therefore, ineligible for adjustment under NACARA, but departing while under such order and then entering or attempting to re-enter without being properly admitted does.

The former section 242B of the Act was replaced by section 308(b)(6) of IIRIRA, and incorporated into the new section 240(b)(7) of the Act. That section bars an alien against whom a final order of removal is entered *in absentia* from eligibility for relief under certain specified sections of the Act. As with section 240B(d) of the Act, because a NACARA applicant is seeking adjustment under a provision of law that is separate from the Act, section 240(b)(7) (formerly section 242B) of the Act does not apply.

Some commenters inquired whether someone who is already a lawful permanent resident (LPR) may ''readjust'' under NACARA in order to obtain some ancillary benefit. In accordance with Board precedent, *see e.g., Matter of Krastman,* 11 I&N Dec. 720, 721 (BIA 1966), the ability of an alien who is an LPR to apply for and be granted adjustment of status to that of an alien lawfully admitted for permanent residence is limited to cases in which the alien is at risk of losing his or her current LPR status, i.e., the alien has been found to be subject to removal from the United States. Otherwise, an alien who is currently an LPR would have to abandon that status by leaving the United States with the intent of abandoning his or her residence in the United States before he or she could be considered eligible for NACARA adjustment. Like other eligible aliens currently abroad, a former LPR whom the Service believes has abandoned his or her status may apply for, and may be granted, parole into the United States in order to file a NACARA adjustment application. However, since each parole request must be considered on its own merits and must be based on either urgent humanitarian reasons or significant public benefit, there are no guarantees that such a parole request would be approved. The alien could end up stranded outside the United States.

One commenter felt that, because NACARA was modeled after the Cuban Adjustment Act of 1966, any Nicaraguan or Cuban who had been in the United States for 1 year should be allowed to adjust status. While there are certain similarities between the two statutes, there are also significant differences, including differences relating to the eligibility requirements. Merely being present in the United States for a year does not enable someone to apply for adjustment of status under NACARA.

Some commenters wanted the Department to provide an exception for those aliens who were deported from the United States more than 180 days before the NACARA enactment date and who as a result had already been absent for more time than allowed under section 202(b)(1) of NACARA. This suggested change exceeds the agency's rulemaking authority and could only be accomplished through new legislation.

3. Documentation Required for Proving Commencement of Physical Presence

In the supplementary information relating to the interim regulation, the Department specifically requested suggestions from interested parties concerning the documentation that may be used to establish physical presence in the United States on or prior to December 1, 1995. In particular, the Department stated that it was:

> soliciting public comments on the need for any additional methods of establishing commencement of physical presence in the United States and suggestions as to what those additional methods should be, including whether the documentary standards listed in 8 CFR 245.13(e)(3) for demonstrating continuity of physical presence should also be applied to the requirement for demonstrating commencement of physical presence.

63 FR 27823, 27824 (May 21, 1998). The rulemaking went on to state that commenters were ''encouraged to explain which classes of aliens would benefit from the proposal, and how the proposal could be implemented without severely compromising the integrity of the adjudicative process.'' *Id.*

The Department received a number of suggestions regarding this matter. The suggestions ranged from expanding the list to include any type of governmental or nongovernmental document or affidavit that the applicant wishes to submit, to condensing the list by limiting it to documents issued by an agency of the Federal Government and excluding documents issued by State and local authorities. Some commenters wanted the Department to accept documents issued by certain private service providers, such as physicians, attorneys, nonpublic schools, and the clergy. Other commenters wanted the Department to give special consideration to persons who, through the nature of their presence in the United States, did not create a ''paper trail,'' such as domestic servants and elderly ''stay-at-homes.'' One commenter proposed that the Department accept any documents that were dated by the government at the

time of issuance or receipt, including labor certification requests submitted by employers to the Department of Labor and visa petitions submitted to the Service.

Many commenters did not make suggestions as to how the Service could improve its ability to detect and deter fraud. Others took the view that the Service already has sufficient capability to detect and deter fraud through its interview and investigation procedures, and that there is no greater risk of fraud in NACARA applications than in other adjustment applications.

In addition, some commenters wanted the Department to clarify that under the existing regulations, the Form I–94, Record of Arrival and Departure, issued by the Service at the time of the alien's inspection and admission or parole is acceptable evidence of commencement of physical presence; others wanted the Department to clarify that the proof of commencement may relate to any time at or after entry and any time on or before December 1, 1995.

After carefully reviewing all of the comments in this regard, the Department has chosen not to expand the categories to include documents that are not based upon governmental records for the following reasons. The enumerated categories in the statute itself give strong indication that Congress intended that applicants provide the most reliable and readily verifiable evidence of the commencement of physical presence in the United States on or before December 1, 1995. Evidence in the form of contemporaneous governmental records (or copies of such contemporaneous records) provides the most reliable and readily verifiable means of documenting such physical presence. Nongovernmental records are generally more difficult to verify. Affidavits submitted by the applicant without independent corroboration raise serious reliability issues. Affidavits submitted by allegedly disinterested third parties on behalf of the applicant would also be problematic in that such affidavits would not provide a contemporaneous accounting of the relevant facts and therefore raise additional reliability concerns. In light of the foregoing, the Department does not think it prudent to extend the categories of documents that can be used to demonstrate commencement of physical presence beyond those set forth in the interim regulation, with one exception.

This one exception will allow an applicant who had attended a recognized private or religious school as a child (*i.e.,* under 21 years of age) to submit a transcript from that school as evidence of commencement of presence in the United States on or before December 1, 1995. This exception is being included in the regulation to ensure parity with the provisions of the regulation pertaining to the Haitian Refugee Immigration Fairness Act (HRIFA), which is in many ways comparable to section 202 of NACARA.

With this one exception, the Department will not expand the categories to include documents that are not based on governmental records. In so doing, the Department does not want to leave the impression that it is disparaging the recordkeeping processes or the integrity of nongovernmental organizations and individuals. Nor is the Department under the illusion that all governmental records are entirely reliable. Experience has shown, however, that governmental records are generally easier to verify than nongovernmental records.

Although one commenter correctly pointed out that the statutory list contains only documents that can be verified through the records of the Federal Government, the Department does not feel that it has sufficient justification at this time to make the requirement more restrictive.

The Department is, however, adopting the suggestions of those commenters who proposed that the list be expanded to include other documents for which governmental records exist. Beginning on the effective date of this final rule, the Department will accept as evidence of commencement of physical presence a certified copy of a Federal, State, or local governmental record that was created on or prior to December 1, 1995, shows that the applicant was present in the United States at the time, and establishes that the applicant sought on his or her own behalf, or some other party sought on the applicant's behalf, a benefit from the Federal, State, or local governmental agency maintaining such record. Additionally, the Department will accept as evidence of commencement of physical presence a certified copy of a Federal, State, or local governmental record that was created on or prior to December 1, 1995, that shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return, property tax payment, or similar submission or payment to the Federal, State, or local governmental agency maintaining such record. These changes will allow applicants to use records such as income tax returns, labor certification requests, and immigrant visa petitions. If the record involved is maintained by the Service, such as an immigrant visa petition, the copy need not be certified.

4. Documentation Required for Proving Continuity of Physical Presence

The interim regulation set forth a lower standard for documents evidencing continuity of presence, allowing applicants to submit both governmental and nongovernmental documents, so long as the document ''bears the name of the applicant, was dated at the time it was issued, and bears the signature of the authorized representative of the issuing authority.'' 8 CFR 245.13(e)(3). The interim regulation also provided a general guideline which stated that submission of one document for each 90-day period since December 1, 1995, would normally be sufficient to establish continuity. *Id.*

The Department received numerous comments regarding evidence needed to establish continuity of presence. One commenter suggested that evidence pertaining to a child (such as school records) should also apply to other family members. Another suggested that a letter from a landlord, utility, or bank detailing the records of that person or organization should be acceptable. Still others recommended accepting affidavits from employers or requiring no documentation at all.

In response to these suggestions, the Department has decided to expand the list of documents that may be used to establish continuity of physical presence to include certified copies of records maintained by organizations chartered by the government, such as public utilities, accredited private and religious schools, and banks. Additionally, if the applicant establishes that a family unit was in existence and cohabiting in the United States, documents evidencing presence of one member of that family unit may be used by other members of that same family unit. Letters and affidavits created after the fact, regardless of the source, will not be acceptable.

A number of commenters pointed out that many documents do not normally bear the signature or seal of the originator, including many documents that are listed in the interim regulation as acceptable, such as utility bills and other receipts, employment records, and credit card statements. The Department is modifying the regulation to state that if the document is normally signed, sealed, issued on letterhead stationary, or otherwise authenticated, it must bear such indication of authenticity.

One commenter pointed out that the reference in the interim regulation to ''pay checks'' should read ''pay stubs''

since the applicant would cash, not retain, the former, but might retain the latter. This correction is being made.

Some commenters suggested that the Department be flexible with regard to persons who have not created a ''paper trail'' such as domestics and the elderly. Others suggested that adjudicators be given a wide range of latitude with regard to continuity documents in general, urging the Department to be flexible with regard to the 90-day guideline.

Adjudicators already have a fair amount of latitude with regard to issues involving continuity of presence. The 90-day guideline was never intended to be a hard-and-fast rule, but rather more of a suggestion designed to guide applicants in judging the amount of documentation to submit. An adjudicator who is otherwise satisfied could always accept less frequent documentation as evidence of continuity of physical presence. Likewise, an adjudicator who has doubts about the alien's claim of continuity could request additional, and more frequent, documentation.

However, the Department has determined that the guideline, which had been intended to ease the burden on applicants by assisting them in gauging how much documentation to submit, might instead become a hindrance and may result in some applicants believing that without a certain minimum amount of documentation they are ineligible to apply for or receive the benefit of adjustment of status under NACARA. Accordingly, the Department is removing the guideline from the regulation, and applicants should simply submit sufficient documentation to satisfy the adjudicating officer or immigration judge that they have maintained continuous presence in the United States within the meaning of NACARA.

As with evidence of commencement, some commenters believed that the fraud risk relating to continuity of presence was no greater than in other applications, and that the Service's existing resources were sufficient to detect and deter fraud. Others felt that the potential for fraud in adjustment of status under NACARA is quite high, and that the regulation should be carefully drafted in order to combat such fraud. The Department takes a very serious view of the potential for fraud involved in applications for adjustment of status under section 202 of NACARA, and finds that regardless of whether or not the fraud potential is greater than that pertaining to other applications, there is certainly no reason to decrease the minimal level of fraud deterrence embodied in the interim regulation.

Finally, the regulation is being modified to clarify one point regarding continuity of presence that some persons may have misinterpreted. The statute allows an applicant to be absent from the United States for up to 180 days after establishing physical presence on or prior to December 1, 1995. Some persons have erroneously interpreted this to mean that absences between the last (pre-December 2, 1995) date on which the applicant commenced physical presence and December 1, 1995, do not count toward the 180-day maximum. The correct interpretation is that all absences between the last pre-December 2, 1995, date on which the applicant commenced physical presence and the date on which the application is approved count toward the 180-day maximum, with the exception of those periods for which time is tolled pursuant to § 245.13(o).

5. Local Police Clearance Requirements

Several commenters were concerned about the requirement that applicants for adjustment under NACARA submit local police clearances, finding it burdensome at best, and impossible to meet at worst. Some wanted the provision modified to allow for statewide (instead of local) clearances, others wanted it waived for minors or where the applicant's local police department refuses to issue a clearance; still others wanted it dropped entirely.

Although there is considerable value in obtaining local police clearances in addition to the nationwide fingerprint clearance, for certain individuals obtaining such local clearances may be extremely difficult or impossible through no fault of the individual. Accordingly, the final regulation is being modified to allow the director or immigration judge having jurisdiction over the application to waive the local police clearance. This waiver will be available upon presentation of a letter or similar documentation from the local police agencies involved showing that the applicant attempted to obtain such clearance but was unable to do so because of local or State policy.

Additionally, for persons who live, or have lived, in locations where the local authorities have made a blanket decision not to issue such clearances for immigration purposes, the regulation is being modified to provide a general exemption from the local police clearance requirement insofar as it relates to time periods when the applicant resided in that locale. One example of such location is New York City.

The regulation is being further clarified to explain that where multiple local law enforcement agencies have jurisdiction over an alien's residence (e.g., city police and county sheriff), the applicant may obtain a clearance from either agency, and that for those individuals living in states where the state police maintain a compilation of all local arrests and convictions, a statewide clearance is sufficient.

6. Determining Nationality

One commenter suggested that all applicants be required to establish nationality through a birth certificate that has been certified by the issuing governmental authority in accordance with 8 CFR 287.6(b).

All applicants are required to meet the proof of official records requirements set forth in 8 CFR 287.6 which, with regard to all documents submitted in support of this and other applications, requires either an official publication of the record, or a copy attested to by an authorized official. However, it should be noted that the Service regulation at 8 CFR 103.2(b) permits submission of secondary evidence and photocopies of documents under certain circumstances.

7. Fee for Fingerprinting Services

One commenter requested that the regulation clarify whether the applicant must pay an additional $25 fee for fingerprinting, in addition to the regular fee for filing an application for adjustment of status. Each applicant who is 14 years of age or older must be fingerprinted and must pay the fingerprinting fee at the time of filing the application for adjustment. The regulation has been clarified in this regard.

8. Employment Authorization

The Department received a number of comments on the employment authorization issuance process. As set forth in the interim regulation, the current process involves the Service's issuing employment authorization on an expedited basis to those applicants whose application is supported by evidence that may be verified through existing Service records. Other applicants must wait up to 180 days (the maximum timeframe allowed under the statute) while the Service adjudicates the application for adjustment of status. A number of commenters, citing the potential hardship to applicants, wanted the Service to issue employment authorization to all applicants immediately upon filing; one, citing the

need to deter fraud, wanted the Service to wait the full 180 days in all cases; and one supported the process as set forth in the interim regulation. Upon examination of all the comments, the Department has concluded that the process set forth in the interim regulation provides the best balance between deterring fraud by mala fide applicants and alleviating financial hardship for bona fide applicants. Accordingly, no changes are being made with regard to the work authorization issue.

Some commenters pointed out the apparent conflict between the statement in the interim rule's supplementary information that the Department ''will authorize employment for applicants whose cases have been pending for fewer than 180 days only if the applicant applies for work authorization and adjustment at the same time,'' and the lack of such concurrent filing requirement in § 245.13(j)(2). The Department has decided not to require that an applicant file concurrently in order to benefit from the more expedited of the two procedures. Accordingly, the language in the interim regulation will not be changed.

9. Travel and Parole Issues

Several commenters expressed concern about the provisions in the interim regulation that allow the Director of the Texas Service Center (TSC) to authorize parole for aliens outside the United States. One questioned the authority of the Attorney General (acting through the Director of the TSC) to authorize parole under these circumstances; a second did not want the Director of the TSC to authorize any paroles for persons to come to the United States; a third wanted the regulation to eliminate, or at least to restrict greatly the Director of the TSC's ability to authorize parole; and a fourth sought assurance that the Service would use a ''tighter screening mechanism'' to prevent abuse.

An explanation of the parole process, and how it relates to the NACARA adjustment program, may help to clarify the Service's approach. The authority to authorize parole into the United States is contained in section 212(d)(5) of the Act, which states:

> (5)(A) The Attorney General may, except as provided in subparagraph (B) or in section 214(f), in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.
>
> (B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207.

The Attorney General has delegated her authority to authorize parole to the Commissioner of the Immigration and Naturalization Service. In the case of an alien who is seeking parole from outside the United States, that authority is normally redelegated to the Director of the INS Office of International Affairs and to the overseas district director having jurisdiction over the area in which the alien is located. The effect of the May 21, 1998, regulation was to expand the list of persons to whom this authority has been re-delegated to include the Director of the TSC for NACARA-related parole requests only. There have been no changes in the process for requesting, the standards for adjudicating, or the statutory authority for issuing parole. Parole determinations will still be made on a case-by-case basis, and the applicant for parole will still have to establish that urgent humanitarian reasons or significant public benefits exist. If the evidence shows that the positive factors (such as the desirability of reuniting a family or allowing an otherwise-eligible alien to participate in this special adjustment of status program which Congress has established) are outweighed by negative discretionary factors, the parole request will be denied as a matter of discretion. Minor changes have been made in the regulation at § 245.13(k) to clarify this point.

One commenter did not want the Department to issue parole authorization to any alien who returned to his or her home country during any portion of the 180 days of absence from the United States permitted by section 202(b)(1) of NACARA. Although the suggestion might be appropriate if NACARA were to require the applicant to establish, for example, that he or she would risk persecution or extreme hardship if he or she went home, there is no such requirement, and the commenter's suggestion will not be adopted.

One commenter felt that if the Service revoked the alien's parole, the regulation should either require the district director to make a bond redetermination or authorize the immigration judge to set bond. As indicated in the passage cited above, when parole is terminated the alien is returned to the custody of the Service and is treated as any other applicant for admission. Under existing statutory and regulatory provisions, the district director then has the option of placing the alien into removal proceedings, admitting the alien (if he or she is admissible), or reparoling the alien. If the decision is to admit or reparole the alien, the district director may require that certain conditions be met, including the posting of an appropriate bond. *See* 8 CFR §§ 212.5(c)(1), 214.1(a)(3).

10. Jurisdictional Issues Between the Service and the Executive Office for Immigration Review (EOIR)

One commenter suggested that the regulation be modified to allow an alien whose application for adjustment is denied by the Service to renew his or her application in proceedings before the Immigration Court regardless of whether the proceedings occur before or after the March 31, 2000, expiration date of the NACARA program. Although section 202(a)(1)(A) of NACARA provides that applications for adjustment must be filed by March 31, 2000, section 202(e) of NACARA also provides that applicants for adjustment of status shall have the same right to, and procedures for, administrative review as are provided to other applicants for adjustment under section 245 of the Act, or aliens subject to removal proceedings under section 240 of the Act. The Department interprets the deadline in section 202(a)(1)(A) of NACARA as relating only to the initial application for adjustment and not to any renewed application in removal proceedings following a denial of the initial application by the Service, provided that initial application was properly filed. The regulation is being modified accordingly.

Another commenter contended that all initial applications must be filed before the Service, and that EOIR only has appellate jurisdiction. The Department does not agree. The authority to adjudicate applications for adjustment of status under section 202 of NACARA rests with the Attorney General. It is well within her authority to assign initial jurisdiction over the applications to the Service (for those aliens who are not in removal proceedings) and to the Immigration Court (for those aliens who are in such proceedings), and to provide that the Board of Immigration Appeals has

appellate jurisdiction over cases decided by immigration judges. This arrangement is in keeping with the provisions of section 202(e) of NACARA.

One commenter suggested that aliens in proceedings before the Immigration Court be afforded the option of applying for adjustment before either the Service or the Immigration Court. Section 245.13(d)(3) already provides an alien in proceedings with a mechanism by which he or she may request administrative closure of such proceedings for the purpose of seeking adjustment of status under section 202 of NACARA before the Service.

One commenter suggested that aliens whose requests for administrative closure are granted be required to apply for adjustment before the Service within a fixed number of days of the granting of administrative closure. The Department considered this approach when drafting the interim regulation, but concluded that the difficulties inherent in administering it would far exceed any benefits.

Finally, one commenter suggested that for those cases which are referred to an immigration judge on a Form I–290C, Notice of Certification, for a ''NACARA-only hearing'' because the applicant had already been subject to an order of exclusion, deportation, or removal at the time the application was filed, the ''NACARA-only hearing'' should be conducted under the same rules of procedure as the proceeding in which the alien received the order of exclusion, deportation, or removal. Under this suggestion, an alien who was placed in exclusion or deportation proceedings prior to the enactment of IIRIRA would not be subject to the post-IIRIRA Immigration Court procedures. The Department does not agree with this suggestion, since the ''NACARA-only hearing'' is a new proceeding, not a reopening of the old exclusion or deportation proceeding.

11. Compliance With the Unfunded Mandates Reform Act of 1995

One commenter suggested that the interim rule implicated the Unfunded Mandates Reform Act of 1995. The interim rule merely implements a statutory provision providing permanent residency for certain qualified aliens. Neither the statute nor the interim rule mandates a State or local jurisdiction to provide any services not already provided to aliens who adjust their status to that of lawful permanent resident under other provisions of immigration law. The Department has no reason to believe that the implementation of section 202 of NACARA will result in any expenditures by State or local governments that are in contravention of the Unfunded Mandates Act.

12. Waiver of Interviews

The Department received a wide range of comments regarding waiver of interviews. One commenter stated that all applicants should be interviewed; a second wanted fewer restrictions on the types of interviews the Director of the TSC can waive; and a third wanted the Service to waive interviews for all children under age 14. It is important to remember that the Service does not waive interviews in order to avoid work for itself or inconvenience to the applicant, but rather because doing so enables it to concentrate its limited resources on those cases most warranting interview. The Department believes this can be best accomplished by giving the Director of the TSC the authority to waive interviews only in those cases that, first, are supported by evidence of commencement of physical presence that can be verified through Service records; second, have no unresolved questions about the applicant's eligibility; and third, do not require a waiver of inadmissibility. Accordingly, no changes will be made in the regulation in this regard.

13. Stay of Removal

A number of commenters felt that the Service should either grant stays of removal to all applicants for adjustment of status under section 202 of NACARA (*i.e.,* without fee or application), or require the application but waive the fee. Most of those who expressed the former view cited subsections 202(c)(1) and (2) of NACARA in support of their view. However, those subsections read:

> (1) IN GENERAL—The Attorney General shall provide by regulation for an alien subject to a final order of deportation or removal *to seek* a stay of such order based on the filing of an application under subsection (a).
>
> (2) DURING CERTAIN PROCEEDINGS—Notwithstanding any provision of the Immigration and Nationality Act, the Attorney General shall not order any alien to be removed from the United States, *if the alien is in exclusion, deportation, or removal proceedings* under any provision of such Act and has applied for adjustment of status under subsection (a), except where the Attorney General has rendered a final administrative determination to deny the application. [Emphasis Added]

Taken together, these two subsections clearly indicate that Congress intended that, with regard to any alien who is the beneficiary of a properly-filed application for adjustment of status under section 202 of NACARA and who is in exclusion, deportation, or removal proceedings before an immigration judge, or whose case is on appeal to the Board of Immigration Appeals (the Board), neither the immigration judge nor the Board may issue an order of exclusion, deportation, or removal unless and until the application for adjustment is denied. The alien does not need to file any request, motion, or other form beyond the application for adjustment itself in order to benefit from this automatic protection.

There is no such automatic protection with regard to an alien who became the subject of a final order of exclusion, deportation, or removal prior to his or her filing the application for adjustment under section 202 of NACARA. If the alien wishes to receive protection from the enforcement of an existing order of exclusion, deportation, or removal, he or she must ''seek a stay of such order.'' The process for seeking a stay of removal is to file Form I–246, Application for Stay of Removal, and pay the required fee, through the local Service office. It must be noted that the filing of Form I–246 is not a prerequisite to applying for, or being granted, benefits under section 202 of NACARA; the decision to seek a stay of removal is strictly up to the alien. Accordingly, no change will be made to the regulation regarding the process for seeking a stay of removal. However, the Department does see a need for guidelines on the adjudication of such request for stay of removal. Accordingly, the regulation is being modified to reflect that, absent significant negative discretionary factors, if an alien files Form I–246, pays the fee, and submits evidence of the filing of an application for adjustment of status under section 202 of NACARA, execution of the order of exclusion, deportation, or removal shall be stayed until a decision is reached on the application for adjustment of status.

14. Typographical Errors, Technical Corrections and Stylistic Changes

One commenter pointed out that the regulation, as published in the **Federal Register** on May 21, 1998, contained a typographical error in 8 CFR 245.13(e)(2) wherein ''1997'' was typed instead of ''1995''. The May 21, 1998, version also contained the typographic error ''Untied'' instead of ''United'' in § 245.13(e)(12). These errors are being corrected. It should also be noted that on June 29, 1998, and again on July 21, 1998, the **Federal Register** published notices correcting two other typographical errors in the May 21 version. The first notice corrected the first sentence of the segment of the supplementary information entitled

''What Happens if an Application is Denied by the Immigration Court?'' to read: ''If the Immigration Court denies the NACARA adjustment application of an alien in exclusion, deportation, or removal proceedings before the Immigration Court, the decision may be appealed to the Board along with and under the same procedures as all other issues before the Immigration Court in those proceedings.'' The second notice corrected the reference in § 240.41 to read ''Public Law 105–100'' instead of ''Pub L. 100''; it also corrected the amendatory language for the appropriate phrase in § 274a.13(d) to read ''§ 274a.12(c)(8), which is governed by paragraph (a)(2) of this section, and § 274a.12(c)(9) insofar as it is governed by § 245.13(j) of this chapter.''

A second commenter requested that the Department incorporate into the regulation a number of issues that were discussed in the supplementary information. In particular, the commenter wanted the Department to include in the regulation provisions specifying the procedure and language used by the Service to notify an alien whose application has been approved of the delivery of the Permanent Residence Card and the process for obtaining temporary evidence of alien registration. The commenter also wanted the Department to include in the regulation provisions specifying the procedure and language used by the Service to notify an alien whose application has been denied of the Service's decision and the right to renew the application for adjustment in proceedings before an immigration judge. Finally, the commenter requested that the regulation contain more specificity regarding the process by which the Board may remand a case to the immigration judge. Several of these suggestions have been adopted, especially where needed for purposes of clarity. Other suggestions pertained to matters that are standard to the adjudication process and are either already covered elsewhere in the regulation or are so basic as to not warrant special coverage in this particular section of the regulation.

Additionally, the Department has noted that in the interim regulation published on May 21, 1998, it failed to provide a mechanism whereby persons outside the United States who are seeking parole authorization pursuant to § 245.13(k)(2) and who must file either an Application for Permission to Reapply for Admission to the United States After Deportation or Removal (Form I–212) or an Application for Waiver of Grounds of Excludability (Form I–601) could file such applications concurrently with the request for parole authorization. This oversight has been corrected by making slight modifications to §§ 212.2 and 212.7. These modifications will allow such applicants to file Forms I–212 and I–601 with the Director of the TSC concurrently with the Form I–131.

Finally, it has come to the Department's attention that the application of current regulations (8 CFR § 103.2(a)(7)) and practice to NACARA applications filed with fee waiver requests may inadvertently result in certain applicants later being deemed to have missed the application deadline due to no fault on the part of the applicant. Currently an application submitted with a fee waiver request is not considered properly filed and does not retain a receipt date until the fee waiver is granted. In cases where a fee waiver is denied, the application is returned to the applicant with instructions to resubmit the application with the appropriate fee at which time the application will be considered properly filed and will be assigned a receipt date. Thus, under current regulations and practice were the Service or Immigration Court to deny a request for a waiver of the NACARA application fee after March 31, 2000, and return the application, the alien could not file another application with the fee because the filing deadline would have already passed. Given the statutorily mandated filing deadline of March 31, 2000, the Department believes that it would be appropriate to modify the regulations with respect to this group of cases to avoid a potentially harsh and irreversible result. Accordingly, the regulations are being amended to afford an applicant whose NACARA fee waiver request is denied the opportunity to submit the required fee within 30 days of notice that the fee waiver request was denied and thereby maintain a timely filing date.

In addition, in a case over which the Board has jurisdiction, an application received by the Board before April 1, 2000, that has been properly signed and executed is considered to be filed before the statutory deadline without payment of the fee or submission of a fee waiver request. Upon remand by the Board, the payment of the fee or a request for a fee waiver is made upon submission of the application to the Immigration Court in accordance with 8 CFR 240.11(f). The regulations are being amended to afford an applicant whose NACARA adjustment fee waiver request is denied the opportunity to submit the required fee within 30 days of the notice that the fee waiver request was denied. If the required fee is not paid within 30 days, the applicant will no longer be considered to have filed a timely NACARA adjustment application.

Good Cause Exception

The Department's implementation of this final rule effective upon publication in the **Federal Register** is based upon the ''good cause'' exception found at 5 U.S.C. 553(d)(3). By statute, all NACARA adjustment applicants must file their applications before April 1, 2000. Immediate implementation of this final rule is necessary to ensure that NACARA applicants are able to avail themselves of the modifications made in this final rule as soon as possible before the end of the application period. Accordingly, delaying the effective date of this final rule for 30 days would be contrary to the public interest.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule allows certain Nicaraguan and Cuban nationals to apply for adjustment of status; it has no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This regulation 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 section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

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. 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 United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

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 1 year, and 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.

Paperwork Reduction Act

The information collection requirement contained in this rule (Form I–485 Supplement B) has been revised. Accordingly, it has been submitted and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act. The changes to the form are effective with the issuance of this rule.

Plain Language in Government Writing

The President's June 1, 1998, Memorandum published at 63 FR 31885, concerning Plain Language in Government Writing, applies to this proposed rule.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies)

8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visas, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 240

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR Parts 3, 240, 245, 274a, and 299, which was published at 63 FR 27823 on May 21, 1998, is adopted as a final rule with the following changes, and part 212 is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. Section 212.2(g)(3) is amended by:

a. Removing the reference to ''§ 245.15(l)'' and adding in its place ''§ 245.15(t)(2)'', and by

b. Adding a new sentence at the end of the paragraph to read as follows:

§ 212.2 Consent to reapply for admission after deportation, removal, or departure at Government expense.

* * * * *

(g) * * *

(3) * * * If an alien who is an applicant for parole authorization under § 245.13(k)(2) of this chapter requires consent to reapply for admission after deportation, removal, or departure at Government expense, or a waiver under section 212(g), 212(h), or 212(i) of the Act, he or she may file the requisite Form I–212 or Form I–601 at the Texas Service Center concurrently with the Form I–131, Application for Travel Document.

* * * * *

3. Section 212.7 is amended by:

a. Adding a new paragraph (a)(1)(iv);

b. Removing the word ''or'' at the end of paragraph (b)(2)(iii);

c. Removing the period at the end of paragraph (b)(2)(iv) and adding in its place a ''; or''; and by

d. Adding a new paragraph (b)(2)(v), to read as follows:

§ 212.7 Waiver of certain grounds of excludability.

(a) * * *

(1) * * *

(iv) *Parole authorization applicant under § 245.13(k)(2) of this chapter.* An applicant for parole authorization under § 245.13(k)(2) of this chapter who is inadmissible and seeks a waiver under section 212(h) or (i) of the Act must file an application on Form I–601 with the Director of the Texas Service Center adjudicating the Form I–131.

* * * * *

(b) * * *

(2) * * *

(v) The Texas Service Center if the alien is outside the United States and is seeking parole authorization under § 245.13(k)(2) of this chapter.

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

4. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

5. Section 245.13 is amended by:

a. Revising paragraph (d)(2);

b. Adding a sentence at the end of paragraph (d)(5)(i);

c. Revising paragraph (e);

d. Adding five new sentences immediately before the last sentence in paragraph (g);

e. Revising the last sentence in paragraph (j)(1);

f. Revising the last sentence in paragraph (k)(1);

g. Adding a sentence at the end of paragraph (k)(2);

h. Adding a new sentence immediately after the first sentence in paragraph (l);

i. Revising the first sentence in the introductory text in paragraph (m); and by

j. Revising paragraphs (m)(1) and (m)(2), to read as follows:

§ 245.13 Adjustment of status of certain nationals of Nicaragua and Cuba under Public Law 105–100.

* * * * *

(d) * * *

(2) *Proceedings pending before the Board of Immigration Appeals.* Except as provided in paragraph (d)(3) of this section, in cases where a motion to reopen or motion to reconsider filed with the Board on or before May 21, 1998, or an appeal, is pending, the Board shall remand, or reopen and remand, the proceedings to the Immigration Court for the sole purpose of adjudicating an application for adjustment of status under section 202 of Public Law 105–100, unless the alien is clearly ineligible for adjustment of status under section 202 of Public Law 105–100. If the immigration judge denies, or the alien fails to file, the application for adjustment of status under section 202 of Public Law 105–100, the immigration judge shall certify the decision to the Board for consideration in conjunction with the previously pending appeal or motion.

* * * * *

(5) * * *

(i) *With the Service.* * * * Absent evidence of the applicant's statutory ineligibility for adjustment of status under section 202 of Public Law 105–100 or significant negative discretionary factors, a Form I–246 filed by a bona fide applicant for adjustment under section 202 of Public Law 105–100 shall be approved, and the removal of the applicant shall be stayed until such time as the application for adjustment has been adjudicated in accordance with this section.

* * * * *

(e) *Application and supporting documents.* Each applicant for adjustment of status must file a Form I–485, Application to Register Permanent Residence or Adjust Status. An applicant should complete Part 2 of Form I–485 by checking box ''h—other'' and writing ''NACARA—Principal'' or ''NACARA—Dependent'' next to that block. Each application must be accompanied by:

(1) The fee prescribed in § 103.7(b)(1) of this chapter;

(2) If the applicant is 14 years of age or older, the fee for fingerprinting prescribed in § 103.7(b)(1) of this chapter;

(3) Evidence of commencement of physical presence in the United States at any time on or before December 1, 1995. Such evidence may relate to any time at or after entry and may consist of either:

(i) Documentation evidencing one or more of the activities specified in section 202(b)(2)(A) of Public Law 105–100;

(ii) A copy of the Form I–94, Record of Arrival and Departure, issued to the applicant at the time of his or her inspection and admission or parole;

(iii) Other documentation issued by a Federal, State, or local authority provided such other documentation bears the signature, seal, or other authenticating instrument of such authority (if the document normally bears such instrument), was dated at the time of issuance, and bears a date of issuance not later than December 1, 1995. Examples of such other documentation include, but are not limited to:

(A) A State driver's license;

(B) A State identification card issued in lieu of a driver's license to a nondriver;

(C) A county or municipal hospital record;

(D) A public college or public school transcript; and

(E) Income tax records;

(iv) A copy of a petition on behalf of the applicant that was submitted to the Service on or before December 1, 1995, and that lists the applicant as being physically present in the United States;

(v) A certified copy of a Federal, State, or local governmental record that was created on or prior to December 1, 1995, shows that the applicant was present in the United States at the time, and establishes that the applicant sought on his or her own behalf, or some other party sought on the applicant's behalf, a benefit from the Federal, State, or local governmental agency keeping such record;

(vi) A certified copy of a Federal, State, or local governmental record that was created on or prior to December 1, 1995, shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return, property tax payment, or similar submission or payment to the Federal, State, or local governmental agency keeping such record; or

(vii) In the case of an applicant who, while under the age of 21, attended a private or religious school in the United States on or prior to December 1, 1995, a transcript from such private or religious school, provided that the school:

(A) Is registered with, approved by, or licensed by, appropriate State or local authorities;

(B) Is accredited by the State or regional accrediting body, or by the appropriate private school association; or

(C) Maintains enrollment records in accordance with State or local requirements or standards;

(4) Evidence of continuity of physical presence in the United States since the last date on or prior to December 1, 1995, on which the applicant established commencement of physical presence in the United States. Such documentation may have been issued by any governmental or nongovernmental authority, provided such evidence bears the name of the applicant, was dated at the time it was issued, and bears the signature, seal, or other authenticating instrument of the issuing authority or its authorized representative, if the document would normally contain such authenticating instrument. Such documentation may include, but is not limited to:

(i) School records;

(ii) Rental receipts;

(iii) Utility bill receipts;

(iv) Any other dated receipts;

(v) Personal checks written by the applicant bearing a dated bank cancellation stamp;

(vi) Employment records, including pay stubs;

(vii) Credit card statements showing the dates of purchase, payment, or other transaction;

(viii) Certified copies of records maintained by organizations chartered by the government, such as public utilities, accredited private and parochial schools, and banks;

(ix) If the applicant establishes that a family unit was in existence and cohabiting in the United States, documents evidencing the physical presence in the United States of another member of that same family unit; and

(x) If the applicant has had correspondence or other interaction with the Service, a list of the types and dates of such correspondence or other contact that the applicant knows to be contained or reflected in Service records;

(5) A copy of the applicant's birth certificate;

(6) If the applicant is between 14 and 79 years of age, a completed Biographic Information Sheet (Form G–325A);

(7) A report of medical examination, as specified in § 245.5;

(8) Two photographs, as described in the instructions to Form I–485;

(9) If the applicant is 14 years of age or older, a police clearance from each municipality where the alien has resided for 6 months or longer since arriving in the United States. If there are multiple local law enforcement agencies (e.g., city police and county sheriff) with jurisdiction over the alien's residence, the applicant may obtain a clearance from either agency. If the applicant resides or resided in a State where the State Police maintain a compilation of all local arrests and convictions, a statewide clearance is sufficient. If the applicant presents a letter from the local police agencies involved, or other evidence, to the effect that the applicant attempted to obtain such clearance but was unable to do so because of local or State policy, the director or immigration judge having jurisdiction over the application may waive the local police clearance. Furthermore, if such local police agency has provided the Service or the Immigration Court with a blanket statement that issuance of such police clearance is against local or state policy, the director or immigration judge having jurisdiction over the case may waive the local police clearance requirement regardless of whether the applicant individually submits a letter from that local police agency;

(10) If the applicant is applying as the spouse of another Public Law 105–100 beneficiary, a copy of their certificate of marriage and copies of documents showing the legal termination of all

other marriages by the applicant or the other beneficiary;

(11) If the applicant is applying as the child, unmarried son, or unmarried daughter of another (principal) beneficiary under section 202 of Public Law 105–100 who is not the applicant's biological mother, copies of evidence (such as the applicant's parent's marriage certificate and documents showing the legal termination of all other marriages, an adoption decree, or other relevant evidence) to demonstrate the relationship between the applicant and the other beneficiary;

(12) A copy of the Form I–94, Arrival-Departure Record, issued at the time of the applicant's arrival in the United States, if the alien was inspected and admitted or paroled; and

(13) If the applicant has departed from and returned to the United States since December 1, 1995, an attachment on a plain piece of paper showing:

(i) The date of the applicant's last arrival in the United States before or on December 1, 1995;

(ii) The date of each departure from the United States since that arrival;

(iii) The reason for each departure; and

(iv) The date, manner, and place of each return to the United States.

* * * * *

(g) *Filing.* * * * All applications must be accompanied by either the correct fee as specified in § 103.7(b)(1) of this chapter; or a request for a fee waiver in accordance with § 103.7(c) of this chapter. An application received by the Service or Immigration Court before April 1, 2000, that has been properly signed and executed and for which a waiver of the filing fee has been requested shall be regarded as having been filed before the statutory deadline regardless of whether the fee waiver request is denied provided that the applicant submits the required fee within 30 days of the date of any notice that the fee waiver request has been denied. In a case over which the Board has jurisdiction, an application received by the Board before April 1, 2000, that has been properly signed and executed shall be considered filed before the statutory deadline without payment of the fee or submission of a fee waiver request. Upon demand by the Board, the payment of the fee or a request for a fee waiver shall be made upon submission of the application to the Immigration Court in accordance with 8 CFR 240.11(f). If a request for a fee waiver is denied, the applicaion shall be considered as having been properly filed with the Immigration Court before the statutory deadline provided that the applicant submits the required fee within 30 days of the date of any notice that the fee waiver request has been denied. * * *

(j) * * *

(1) *Application.* * * * The applicant may submit Form I–765 concurrently with, or subsequent to, the filing of the Form I–485.

* * * * *

(k) * * *

(1) *Travel from and return to the United States while the application for adjustment of status is pending.* * * * Unless the applicant files an advance parole request prior to departing from the United States, and the Service approves such request, his or her application for adjustment of status under section 202 of Public Law 105–100 is deemed to be abandoned as of the moment of his or her departure. Parole may only be authorized pursuant to the authority contained in, and the standards prescribed in, section 212(d)(5) of the Act.

(2) *Parole authorization for the purpose of filing an application for adjustment of status under section 202 of Public Law 105–100.* * * * Parole may only be authorized pursuant to the authority contained in, and the standards prescribed in, section 212(d)(5) of the Act.

* * * * *

(l) *Approval.* * * * The director shall also advise the alien regarding the delivery of his or her Permanent Resident Card and of the process for obtaining temporary evidence of alien registration. * * *

(m) *Denial and review of decision.* If the director denies the application for adjustment of status under the provisions of section 202 of Public Law 105–100, the director shall notify the applicant of the decision, and of any right to renew the application in proceedings before the immigration judge. * * *

(1) In the case of an alien who is not maintaining valid nonimmigrant status and who had not previously been placed in exclusion, deportation, or removal proceedings, initiate removal proceedings in accordance with § 239.1 of this chapter, during which the alien may renew his or her application for adjustment of status under section 202 of Public Law 105–100. Such renewed application may be filed with the Immigration Court before, on, or after March 31, 2000, provided the initial application was properly filed with the Service on or before March 31, 2000; or

(2) In the case of an alien whose previously initiated exclusion, deportation, or removal proceeding had been administratively closed or continued indefinitely under paragraph (d)(3) of this section, advise the Immigration Court that had administratively closed the proceeding, or the Board, as appropriate, of the denial of the application. The Immigration Court or the Board will then recalendar or reinstate the prior exclusion, deportation, or removal proceeding, during which proceeding the alien may renew his or her application for adjustment under section 202 of Public Law 105–100. Such renewed application may be filed with the Immigration Court before, on, or after March 31, 2000, provided the initial application was properly filed with the Service on or before March 31, 2000; or

* * * * *

PART 299—IMMIGRATION FORMS

6. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

7. Section 299.1 is amended in the table by revising the entry for Form ''I–485 Supplement B'' to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	* * *
I–485 Supplement B	12–01–99	NACARA Supplement to Form I–485 Instructions.
*	*	* * *

Dated: March 15, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–7205 Filed 3–21–00; 3:47 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–06–AD; Amendment 39–11645; AD 2000–06–05]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, and AS332L2

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Eurocopter France Model SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, and AS332L2 helicopters. This action requires replacing certain tail rotor blades before further flight after April 30, 2000. This amendment is prompted by loss of control of a helicopter due to a lightning strike on a tail rotor blade. This condition, if not corrected, could result in loss of a tail rotor blade and subsequent loss of control of the helicopter.

DATES: Effective April 10, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 23, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–06–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aerospace Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, and AS332L2 helicopters. The DGAC advises withdrawing tail rotor blades, part numbers (P/N) 332A12–0010, –0020, –0030, –0035, and –0045, and all dash numbers of these P/N, from service by March 31, 2000, due to an accident caused by a lightning strike on a tail rotor blade, P/N 332A–12–0010, fitted on an AS332 helicopter.

Eurocopter France has issued Service Bulletins 01.57 for the Models SA330 and 01.00.59 for the Models AS332, both dated November 23, 1999, which specify withdrawing tail rotor blades, P/N 332A12–0010, –0020, –0030, –0035, –0045, and all dash numbers of these P/N, from service. The DGAC classified these service bulletins as mandatory and issued AD's 2000–002–081(A) and 2000–003–075(A), both dated January 12, 2000, to ensure the continued airworthiness of these helicopters in France.

These helicopter 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 21.29) 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 these type designs that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, and AS332L2 helicopters of the same type designs registered in the United States, this AD is being issued to prevent failure of a tail rotor blade due to a lightning strike. This AD requires removing from service any tail rotor blade, P/N 332A–12–0010, –0020, –0030, –0035, and –0045, and all dash numbers of these P/N. The actions are required to be accomplished in accordance with the service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, removing and replacing these tail rotor blades are required before further flight after April 30, 2000, and this AD must be issued immediately.

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.

The FAA estimates that 7 helicopters will be affected by this AD, that it will take approximately 2 work hours to accomplish removing and replacing the tail rotor blades, and that the average labor rate is $60 per work hour. Required parts will cost approximately $150,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,050,840 to replace the tail rotor blades on the entire fleet.

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 should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–06–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein 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 the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 2000–06–05 Eurocopter France: Amendment 39–11645. Docket No. 2000–SW–06–AD.

Applicability: SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, and AS332L2 helicopters, certificated in any category.

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

Compliance: Required before further flight after April 30, 2000, unless accomplished previously.

To prevent failure of a tail rotor blade due to a lightning strike and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove from service any tail rotor blade with a following part number (P/N), including all dash numbers for each P/N:
332A–12–0010
332A–12–0020
332A–12–0030
332A–12–0035
332A–12–0045

Replace with an airworthy tail rotor blade with a following P/N:
332A–12–0050–01 or
332A–12–0055–01

Note 2: Eurocopter France Service Bulletins 01.57 for the Models SA330 and 01.00.59 for the Models AS332, both dated November 23, 1999, pertain to the subject of this AD.

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

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

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

(d) This amendment becomes effective on April 10, 2000.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD's 2000–002–081(A) and 2000–003–075(A), both dated January 12, 2000.

Issued in Fort Worth, Texas, on March 15, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–7111 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–77–AD; Amendment 39–11647; AD 2000–06–07]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GMBH Model MBB–BK 117 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Eurocopter Deutschland GMBH (ECD) Model MBB–BK 117 helicopters, that requires changing the retirement life for the tail rotor (output) drive bevel gear (bevel gear). This amendment is prompted by a fatigue analysis of the bevel gear conducted by the manufacturer due to installation of different tail rotor blades. The actions specified by this AD are intended to prevent fatigue failure of the bevel gear, loss of tail rotor drive, and subsequent loss of control of the helicopter.

EFFECTIVE DATE: April 28, 2000.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

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 ECD Model MBB–BK 117 helicopters was published in the **Federal Register** on December 10, 1999 (64 FR 69208). That action proposed to require changing the retirement life for the bevel gear.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except that the part number of the affected bevel gear has been added to the applicability paragraph and the limitations paragraph to more specifically identify the affected part. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 130 helicopters of U.S. registry will be

affected by this AD, that it will take approximately 0.5 work hour per helicopter to change the retirement life in the records, and 36 work hours to replace the bevel gear. Required parts will cost approximately $14,092 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,116,660 to change the retirement life entry and to replace the bevel gear upon reaching 18,500 hours TIS for the entire fleet.

The regulations adopted herein 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 the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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 FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 2000–06–07 Eurocopter Deutschland: Amendment 39–11647. Docket No. 98–SW–77–AD.

Applicability: Model MBB–BK 117 helicopters, serial numbers 7001 through 7250 and 7500 through 7509, with tail rotor (output) drive bevel gear (bevel gear), part number (P/N) 117–12215–01, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the bevel gear, loss of tail rotor drive, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 100 hours time-in-service (TIS):

(1) Record in the accessory replacement record and historical record ''Main Transmission'' section the retirement life of 18,500 hours TIS for the bevel gear.

(2) Determine the total hours TIS of the bevel gear. If the total hours TIS cannot be determined, use the operating time of the main transmission.

(b) If the bevel gear's total hours TIS is equal to or greater than 18,400 hours TIS, remove the bevel gear within the next 100 hours TIS and replace it with an airworthy bevel gear. If the bevel gear's total hours TIS is less than 18,400 hours TIS, remove the bevel gear on or before 18,500 hours TIS and replace it with an airworthy bevel gear.

(c) This AD revises the helicopter Airworthiness Limitations section of the maintenance manual by establishing a new retirement life for the bevel gear, P/N 117–12215–01, of 18,500 hours TIS.

(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, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

(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 helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on April 28, 2000.

Note 3: The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD No. 97–350, dated December 18, 1997.

Issued in Fort Worth, Texas, on March 17, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–7336 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–32]

Revision of Class D Airspace; Hobbs, NM

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class D airspace at Hobbs, NM.

EFFECTIVE DATE: The direct final rule published at 65 FR 2537 is effective 0901 UTC, April 20, 2000.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 18, 2000, (65 FR 2537). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 20, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on March 16, 2000.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–7344 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–10]

Revision of Class D Airspace, Alexandria England AFB, LA; Revocation of Class D Airspace, Alexandria Esler Regional Airport, LA; and Revision of Class E Airspace, Alexandria, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class D Airspace at Alexandria England Air Force Base (AFB), LA; revokes the Class D Airspace at Alexandria Esler Regional Airport, LA; and revises the Class E Airspace at Alexandria, LA. The closure of England AFB and subsequent name change to Alexandria International Airport and closure of the air traffic control tower at Esler Regional Airport have made this rule necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Alexandria International and Esler Regional Airports.

DATES: Effective 0901 UTC, August 10, 2000. Comments must be received on or before May 8, 2000.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2000–ASW–10, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class D Airspace at Alexandria England AFB, LA; revokes the Class D Airspace at Alexandria Esler Regional Airport, LA; and revises the Class E Airspace at Alexandria, LA. The closure of England AFB and subsequent name change to Alexandria International Airport and closure of the air traffic control tower at Esler Regional Airport have made this rule necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Alexandria International and Esler Regional Airports.

Class D and E airspace designations are published in Paragraphs 5000 and 6005 respectively, of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR § 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–ASW–10.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule will not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points,* dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D airspace areas.

* * * * *

ASW LA D Alexandria, LA [Revised]

Alexandria International Airport, LA
(Lat. 31°19′55″ N., long. 92°32′55″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.7-mile radius of Alexandria International Airport.

* * * * *

ASW LA D Alexandria Esler Regional Airport, LA [Revoked]

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

* * * * *

ASW LA E5 Alexandria, LA [Revised]

Alexandria International Airport, LA
(Lat. 31°19′39″ N., long. 92°32′55″ W.)
Alexandria Esler Regional Airport, LA
(Lat. 31°23′42″ N., long. 92°17′45″ W.)
Esler VORTAC
(Lat. 31°26′51″ N., long. 92°19′19″ W.)

That airspace extending upward from 700 feet above the surface within a 14-mile radius of Alexandria International Airport and within a 7.7-mile radius of Esler Regional Airport and within 1.7 miles each side of the 154° radial of the Esler VORTAC extending from the 7.7-mile radius to 10.6 miles southeast of the airport.

* * * * *

Issued in Fort Worth, TX, on March 16, 2000.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–7347 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–01]

Revision of Class E Airspace; Corsicana, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

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

EFFECTIVE DATE: The direct final rule published at 65 FR 3382 is effective 0901 UTC, April 20, 2000.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 21, 2000, (65 FR 3382). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 20, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on March 16, 2000.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–7345 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–02]

Establishment of Class E Airspace; Stigler, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which establishes Class E airspace at Stigler, OK.

EFFECTIVE DATE: The direct final rule published at 65 FR 3381 is effective 0901 UTC, April 20, 2000.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 21, 2000, (65 FR 3381). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 20, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on March 16, 2000.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–7346 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8867]

RIN 1545–AW69

Passive Foreign Investment Companies; Definition of Marketable Stock; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations which were published in the **Federal Register** on Tuesday, January 25, 2000 (65 FR 3817), relating to the new mark-to-market election for stock of a passive foreign investment company.

DATES: This correction is effective January 25, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Laudeman at (202) 622–3840 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 1296 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8867) contain an error in the title of the official signing the document.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8867), which were the subject of FR Doc. 00–1530, is corrected as follows:

1. On page 3820, third column, at the end of TD 8867, the title of the official signing the document, ''Assistant Secretary of the Treasury.'' is corrected to read ''Acting Assistant Secretary of the Treasury (Tax Policy).''

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5237 Filed 3–23–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

[TD 8848]

RIN 1545–AX29

Use of Penalty Mail in the Location and Recovery of Missing Children; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to procedural rules.

SUMMARY: This document contains a correction to procedural rules which were published in the **Federal Register** on Monday, December 13, 1999 (64 FR 69398), establishing the procedures under which the IRS may use penalty mail to aid in the location and recovery of missing children.

DATES: This correction is effective December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Randall Hall at (202) 283–7900 or Sandy Kopta at (202) 622–3726 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The procedural rules that are the subject of this correction are the result of the Juvenile Justice and Delinquency Prevention Act of 1974.

Need for Correction

As published, the procedural rules (TD 8848) contain a typographical error that need correction to be corrected.

Correction of Publication

Accordingly, the publication of the procedural rules (TD 8848), which were the subject of FR Doc. 99–32098, is corrected as follows:

§ 601.901 [Corrected]

1. On page 69399, first column, § 601.901, paragraph (e) is corrected to read as follows:

§ 601.901 Missing children shown on penalty mail.

* * * * *

(e) *Period of applicability.* This section is applicable December 13, 1999 through December 31, 2002.

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5241 Filed 3–23–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Update of Revised/Reaffirmed Documents Incorporated by Reference

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Technical amendment.

SUMMARY: This document makes technical amendments to regulations that were published in a final rule on December 28, 1999 (64 FR 72756). This amendment incorporates the revision of 10 documents previously incorporated by reference in regulations governing oil and gas and sulfur operations in the Outer Continental Shelf (OCS). The revised editions of these 10 documents will ensure that lessees use the best available and safest technologies while operating in the OCS. Additionally, MMS is acknowledging the reaffirmation of 7 documents previously incorporated by reference in regulations governing oil and gas and sulfur operations in the OCS. The reaffirmation dates issued by the American Petroleum Institute's Manual of Petroleum Measurement Standards will be added to the 7 pertinent documents incorporated by reference.

EFFECTIVE DATE: April 24, 2000.

The incorporation by reference of publications listed in the regulation is approved by the Director of the Federal Register as of April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Frederick Gray at (703) 787–1027.

SUPPLEMENTARY INFORMATION: The revised editions of the documents previously incorporated by reference are: (1) Fourth Edition of the American Petroleum Institute (API) Recommended Practice for Operation and Maintenance of Offshore Cranes (API RP 2D); (2) Sixth Edition of the API Specification for Quality Programs for the Petroleum and Natural Gas Industry (API Spec Q1); (3) Second Edition of the API Manual of Petroleum Measurement Standards (MPMS), Chapter 4, Proving Systems, Section 6, Pulse Interpolation (MPMS, Chapter 4, Section 6); (4) Second Edition of the API MPMS, Chapter 4, Proving Systems, Section 7, Field Standard Test Measures (MPMS, Chapter 4, Section 7); (5) American Society for Testing and Materials (ASTM) Standard Specification for Concrete Aggregates (ASTM Standard C 33–99a); (6) ASTM Standard Specification for Ready-Mixed Concrete

(ASTM Standard C 94/C 94M–99); (7) ASTM Standard Specification for Portland Cement (ASTM Standard C 150–99); (8) ASTM Standard Specification for Lightweight Aggregates for Structural Concrete (ASTM Standard C 330–99); (9) ASTM Standard Specification for Blended Hydraulic Cements (ASTM Standard C 595–98); and (10) 1999 Edition of the NACE International Sulfide Stress Cracking Resistant Metallic Materials for Oilfield Equipment (NACE Standard MR0175–99).

MMS has reviewed these documents and has determined that the new editions must be incorporated into the regulations to ensure the use of the best and safest technologies. Our review shows that the changes between the old and new editions result in safety improvements or represent new industry standard technology and will not impose undue cost on the offshore oil and gas industry. Furthermore, the old editions are not readily available to the affected parties because they are out of publication. Therefore, we are amending these documents to incorporate the updated editions according to the authority in 30 CFR 250.198(a)(2). We are updating the appropriate sections of other subparts to reflect these document revisions.

The regulations for cranes and other material-handling equipment on fixed platforms were recently revised under § 250.108 for all operations on the OCS, including those for sulphur. However, crane operations for sulphur leases are also regulated under § 250.1605(g). For consistency, this technical amendment simply revises § 250.1605(g) to specify that sulphur operations follow the requirements in § 250.108 with respect to crane operations.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Accordingly, 30 CFR Part 250 is amended by making the following technical amendments:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

2. In § 250.198, in the table in paragraph (e), the following changes are made:

A. Remove the entries for ASTM standards C33–93, C94–96, C150–95a, C330–89, C595–94, and NACE standard MR.01–75–96.

B. Add entries for ASTM standards C 33–99a, C 94/C 94M–99, C 150–99, C 330–99, C 595–98 and NACE standard MR0175–99 as set forth below.

C. Revise the remaining entries as set forth below.

§ 250.198 Documents incorporated by reference.

* * * * *

(e) * * *

Title of document	Incorporated by reference at
* * * * *	* *
API MPMS, Chapter 4, Section 6, Pulse Interpolation, Second Edition, May 1999, API Stock No. H04062.	§ 250.1202(a)(3) and (f)(1).
API MPMS, Chapter, Section 7, Field Standard Test Measures, Second Edition, December 1998, API Stock No. H04072.	§ 250.1202(a)(3) and (f)(1).
* * * * *	* *
API MPMS, Chapter 5, Section 2, Measurement of Liquid Hydrocarbons by Displacement Meters, Second Edition, November 1987, reaffirmed January 1997, API Stock No. H30102.	§ 250.1202(a)(3).
* * * * *	* *
API MPMS, Chapter 5, Section 5, Fidelity and Security of Flow Measurement Pulsed-Data Transmission Systems, First Edition, June 1982, reaffirmed January 1997, API Stock No. H30105.	§ 250.1202(a)(3).
* * * * *	* *
API MPMS, Chapter 6, Section 7, Metering Viscous Hydrocarbons, Sescond Edition, May 1991, reaffirmed July 1996, API Stock No. H30127.	§ 250.1202(a)(3).
* * * * *	* *
API MPMS, Chapter 9, Density Determination, Section 1, Hydrometer Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products, First Edition, June 1981, reaffirmed December 1998, API Stock No. H30181; also available as ANSI/ASTM D 1298.	§ 250.1202(a)(3) and (1)(4).
API MPMS, Chapter 9, Section 2, Pressure Hydrometer Test Method for Density or Relative Density, First Edition, April 1982, reaffirmed December 1998, API Stock No. H30182.	§ 250.1202(a)(3) and (1)(4).
* * * * *	* *
API MPMS, Chapter 11.2.2, Compressibility Factors for Hydrocarbons: 0.350–0.637 Relative Density (60°F/60°F) and −50°F to 140°F Metering Temperature, Second Edition, October 1986, reaffirmed March 1997, API Stock No. H27307; also available as Gas Processors Association (GPA) 8286.	§ 250.1202(a)(3) and (g)(4).

Title of document	Incorporated by reference at
* * * * *	* *
API MPMS, Chapter 14, Section 3, Part 3, Natural Gas Applications, Third Edition, August 1992, reaffirmed December 1998, API Stock No. H30353; also available as ANS/API 2530, Part 3.	§ 250.1203(b)(2).
* * * * *	* *
API RP 2D, Recommended practice for Operation and Maintenance of Offshore Cranes, Fourth Edition, August 1, 1999. API Stock No. G02D04.	§ 250.108(a)(1).
* * * * *	* *
API Spec Q1, Specification for Quality Programs for the Petroleum and Natural Gas Industry, Sixth Edition, March 1, 1999. API Stock No. GQ1006.	§ 250.806(a)(2)(ii).
* * * * *	* *
ASTM Standard C 33–99a. Standard Specification for Concrete Aggregates	§ 250.908(b)(4)(i).
ASTM Standard C 94/C 94M–99, Standard Specification for Ready-Mixed Concrete	§ 250.908(e)(2)(i).
ASTM Standard C 150–99, Standard Specification for Portland Cement	§ 250.908(b)(2)(i).
ASTM Standard C 330–99, Standard Specification for Lightweight Aggregates for Structural Concrete.	§ 250.908(b)(4)(i).
ASTM Standard C 595–98, Standard Specification for Blended Hydraulic Cements	§ 250.908(b)(2)(i).
* * * * *	* *
NACE Standard MR0175–99, Sulfide Stress Cracking Resistant Metallic Materials for Oilfield Equipment, Revised January 1999, NACE Item No. 21302.	§ 250.417(p)(2).
* * * * *	* *

3. In § 250.417, paragraph (p)(2) is revised to read as follows:

§ 250.417 Hydrogen sulfide.

* * * * *

(p) * * *

(2) Use BOP system components, wellhead, pressure-control equipment, and related equipment exposed to H_2S-bearing fluids that conform to NACE Standard MR0175–99.

* * * * *

4. In § 250.908, paragraphs (b)(2)(i), (b)(4)(i), and (e)(2)(i) are revised to read as follows:

§ 250.908 Concrete-gravity platforms.

* * * * *

(b) * * *

(2) * * *

(i) Cement must be equivalent to Type I, II, or III portland cement as specified by ASTM Standard C 150–99, Standard Specification for Portland Cement, or portland-pozzolan cement as specified by ASTM Standard C 595–98, Standard Specification for Blended Hydraulic Cements. However, the suitability of Type III cement to serve its intended function must be demonstrated.

(4) * * *

(i) Aggregates must conform to the requirements of ASTM Standard C 33–99a, Standard Specification for Concrete Aggregates. Lightweight aggregates conforming to ASTM Standard C 330–99, Standard Specification for Lightweight Aggregates for Structural Concrete, will only be permitted if they do not pose durability problems and where they are used according to the applicable provisions of the ACI publication, ACI Standard 318, Building Code Requirements for Reinforced Concrete, plus Commentary.

* * * * *

(e) * * *

(2) * * *

(i) Mixing of concrete must conform to the requirements of ACI Standard 318 and ASTM Standard C 94/C 94M–99, Standard Specification for Ready-Mixed Concrete;

* * * * *

5. In § 250.1605, paragraph (g) is revised to read as follows:

§ 250.1605 Drilling requirements.

* * * * *

(g) *Crane operations.* You must operate a crane installed on fixed platforms according to § 250.108 of this subpart.

* * * * *

Dated: March 16, 2000.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–7267 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 040–0223a FRL–6563–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution Control District, Monterey Bay Unified Air Pollution Control District, and Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the following districts: Ventura County Air Pollution Control District (VCAPCD), Monterey Bay Unified Air Pollution Control District (MBUAPCD), and Santa Barbara County Air Pollution Control District (SBCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from architectural coatings. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA

action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on May 23, 2000 without further notice, unless EPA receives adverse comments by April 24, 2000. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Floor, Ventura, CA 93003.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: VCAPCD Rule 74.2, Architectural Coatings; MBUAPCD Rule 426, Architectural Coatings; and SBCAPCD Rule 323, Architectural Coatings. VCAPCD Rule 74.2 was submitted by the California Air Pollution Control District (CARB) to EPA on November 12, 1992. MBUAPCD Rule 426 and SBCAPCD Rule 323 were both submitted by CARB to EPA on March 3, 1997.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Ventura County, Monterey Bay, and Santa Barbara-Santa Maria-Lompoc Areas. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call).

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Section 110(a)(2)(A) of the Act requires that plans which are submitted to the EPA in order to achieve or maintain the National Ambient Air Quality Standards (NAAQS) contain enforceable emission limitations. The Ventura County Area is classified as severe and the Monterey Bay and Santa Barbara-Santa Maria-Lompoc Areas are classified as serious.[1]

The State of California submitted many rules for incorporation into its SIP on November 12, 1992 and March 3, 1997, including the rules being acted on in this document. This document addresses EPA's direct-final action for VCAPCD Rule 74.2, Architectural Coatings; MBUAPCD Rule 426, Architectural Coatings; and SBCAPCD Rule 323, Architectural Coatings. These rules were adopted by the VCAPCD, MBUAPCD, and SBCAPCD on August 11, 1992, December 18, 1996, and July 18, 1996, respectively. VCAPCD Rule 74.2 was found to be complete on March 26, 1993. MBUAPCD Rule 426 and SBCAPCD Rule 323 were found to be complete on August 12, 1997. Findings of completeness are made pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V.[2] These submitted rules are being finalized for approval into the SIP.

These rules control VOC emissions from architectural coatings. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of the districts' efforts to achieve the NAAQS for ozone and in response to EPA's SIP-Call and the section 110(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of VOC rules, EPA must evaluate the rules for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

In addition, these rules were evaluated against the general requirements of the CAA (section 110 and part D) 40 CFR part 52 and ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 **Federal Register**'' (EPA's ''Blue Book''). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On January 24, 1985, EPA approved into the SIP a version of Rule 74.2, Architectural Coatings, that had been adopted by the VCAPCD on November 22, 1983. VCAPCD submitted Rule 74.2, Architectural Coatings includes the following significant changes from the current SIP:

- Deletion of Section A1b in the SIP version to allow the sale of bituminous pavement sealers;
- Addition of 19 VOC limits and deletion of three VOC limits from the Table of Standards;
- A provision that the lowest VOC limit shall apply when a coating may fall under two or more categories;
- A requirement that all VOC-containing materials be stored in closed containers;
- A requirement that the maximum VOC content be displayed on coating containers;
- Deletion of Section B1 in the SIP version to remove the small business exemption;
- Exemptions for aerosol containers and emulsion-type bituminous pavement sealers;
- Removal of exemptions for 11 categories of coatings;
- Addition of test methods for determining the VOC, acid, and metal content of coatings; and
- Addition of 15, deletion of eight, and revision of 12 definitions.

On February 9, 1996, EPA approved into the SIP a version of Rule 426, Architectural Coatings, that had been adopted by the MBUAPCD on August

[1] The Ventura County, Monterey Bay, and Santa Barbara-Santa Maria-Lompoc Areas retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991). On December 10, 1997, EPA published a final rule reclassifying the Santa Barbara-Santa Maria-Lompoc Area from moderate to serious. See 62 FR 65025. This reclassification became effective on January 9, 1998.

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

25, 1993. MBUAPCD submitted Rule 426, Architectural Coatings includes the following significant changes from the current SIP:

- Addition of a VOC limit to the Table of Standards;
- References to other MBUAPCD rules;
- Addition of three and revision of five definitions; and
- Addition of a test method for determining the gloss of non-flat coatings.

On July 14, 1995, EPA approved into the SIP a version of Rule 323, Architectural Coatings, that had been adopted by the SBCAPCD on March 16, 1995. SBCAPCD submitted Rule 323, Architectural Coatings includes the following significant change from the current SIP:

- Deletion of the definition of reactive organic compound found in Section C27 of the SIP to maintain consistency with the definition in SBCAPCD Rule 102, Definitions.

EPA has evaluated the submitted rules and has determined that they strengthen the applicable SIP and are consistent with the CAA and EPA policy. Therefore, VCAPCD Rule 74.2, Architectural Coatings; MBUAPCD Rule 426, Architectural Coatings; and SBCAPCD Rule 323, Architectural Coatings are being approved under section 110(k)(3) of the CAA.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve these SIP revisions should adverse comments be filed. This rule will be effective May 23, 2000 without further notice unless the Agency receives adverse comments by April 24, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule is effective on May 23, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under 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 rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the 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 rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses,

small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under sections 110 and 301, and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: March 10, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

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

PART 52 [AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(190)(i)(A)(*2*), (244)(i)(A)(*5*), and (244)(i)(F) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(190) * * *

(i) * * *

(A) * * *

(*2*) Rule 74.2 revised on August 11, 1992.

* * * * *

(244) * * *

(i) * * *

(A) * * *

(*5*) Rule 426 revised December 18, 1996.

* * * * *

(F) Santa Barbara County Air Pollution Control District.

(*1*) Rule 323 revised July 18, 1996.

* * * * *

[FR Doc. 00–7227 Filed 3–23–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–6563–9]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency (''EPA'')

ACTION: Final rule—consistency update.

SUMMARY: EPA is finalizing the update of the Outer Continental Shelf (''OCS'') Air Regulations proposed in the **Federal Register** on November 19, 1999, August 19, 1999, May 27, 1999, August 6, 1998, January 16, 1998, August 23, 1997, July 16, 1997, December 16, 1996, and July 9, 1996. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act Amendments of 1990 (''the Act''). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara

County Air Pollution Control District, San Luis Obispo County Air Pollution Control District, South Coast Air Quality Management District, and Ventura County Air Pollution Control District are the designated COAs and requirements submitted by the State of California. The intended effect of approving the requirements contained in ''Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources' (February, 2000), ''San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources'' (February, 2000), ''South Coast Air Quality Management District Requirements Applicable to OCS Sources' (Part I, II and III) (February, 2000), ''Ventura County Air Pollution Control District Requirements Applicable to OCS Sources' (February, 2000), and ''State of California Requirements Applicable to OCS Sources'' (February, 2000) is to regulate emissions from OCS sources in accordance with the requirements onshore.

DATES: This action is effective April 24, 2000.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency (LE–6102), 401 ''M'' Street, SW, Room M–1500, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air and Toxics Division (AIR–4), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Background

TABLE 1

Date of Proposed Rule	Federal Register citation
November 19, 1999 ..	64 FR 63271.
August 19, 1999	64 FR 45217.
May 27, 1999	64 FR 29775.
August 6, 1998	63 FR 41991.
January 19, 1998	63 FR 8642.
August 23, 1997	62 FR 45604.
July 16, 1997	62 FR 38047.
December 16, 1996 ..	61 FR 66003.
July 9, 1996	61 FR 36012.

On the dates listed in Table 1, EPA proposed to approve requirements into the OCS Air Regulations pertaining to Santa Barbara County APCD, San Luis Obispo County APCD, South Coast AQMD, Ventura County APCD, and State of California. These requirements are being promulgated in response to the submittal of rules from local air pollution control agencies and the State of California. EPA has evaluated the proposed requirements to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

A 30-day public comment period was provided in each Proposed Rule, and no comments were received.

EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the Proposed Rules listed in table 1. EPA is approving the proposed actions as modified under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into Part 55 as they exist onshore.

Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (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 rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under

Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

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

This final rule will not have a significant impact on a substantial number of small entities because consistency updates under section 328(a) of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the consistency update approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action.

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 15, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Title 40, Chapter I of the Code of Federal Regulations, Part 55, is to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended by revising paragraphs (e)(3)(i)(A), (e)(3)(ii)(E), (e)(3)(ii)(F), (e)(3)(ii)(G), and (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States seaward boundaries, by State.

* * * * *

(e) * * *

(3) * * *

(i) * * *

(A) State of California Requirements Applicable to OCS Sources.

(ii) * * *

(E) *San Luis Obispo County Air Pollution Control District Requirements*

Applicable to OCS Sources, February 2000.

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources,* February 2000.

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I , II and Part III), February 2000.

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources,* February 2000.

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3. Appendix A to CFR Part 55 is amended by revising paragraphs (a)(1) and (b)(5), (6), (7), and (8) under the heading ''California'' to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

(a) State Requirements

(1) The following requirements are contained in *State of California Requirements Applicable to OCS Sources*, February 2000.

Barclays California Code of Regulations

The following sections of Title 17 Subchapter 6:

17 § 92000 Definitions (Adopted 5/31/91)
17 § 92100 Scope and Policy (Adopted 5/31/91)
17 § 92200 Visible Emission Standards (Adopted 5/31/91)
17 § 92210 Nuisance Prohibition (Adopted 5/31/91)
17 § 92220 Compliance with Performance Standards (Adopted 5/31/91)
17 § 92400 Visible Evaluation Techniques (Adopted 5/31/91)
17 § 92500 General Provisions (Adopted 5/31/91)
17 § 92510 Pavement Marking (Adopted 5/31/91)
17 § 92520 Stucco and Concrete (Adopted 5/31/91)
17 § 92530 Certified Abrasive (Adopted 5/31/91)
17 § 92540 Stucco and Concrete (Adopted 5/31/91)

Health and Safety Code

The following section of Division 26, Part 4, Chapter 4, Article 1: Health and Safety Code § 42301.13 of *seq*. Stationary sources: demolition or removal (chaptered 7/25/96)

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(b) Local Requirements.

* * * * *

(5) The following requirements are contained in *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources*, February 2000:

Rule 103 Conflicts Between District, State and Federal Rules (Adopted 8/6/76)
Rule 105 Definitions (Adopted 1/24/96)
Rule 106 Standard Conditions (Adopted 8/6/76)
Rule 108 Severability (Adopted 11/13/84)
Rule 113 Continuous Emissions Monitoring, except F. (Adopted 7/5/77)
Rule 201 Equipment not Requiring a Permit, except A.1.b. (Revised 4/26/95)
Rule 202 Permits, except A.4. and A.8. (Adopted 11/5/91)
Rule 203 Applications, except B. (Adopted 11/5/91)
Rule 204 Requirements, except B.3. and C. (Adopted 8/10/93)
Rule 209 Provision for Sampling and Testing Facilities (Adopted 11/5/91)
Rule 210 Periodic Inspection, Testing and Renewal of Permits to Operate (Adopted 11/5/91)
Rule 213 Calculations, except E.4. and F. (Adopted 8/10/93)
Rule 302 Schedule of Fees (Adopted 6/18/97)
Rule 305 Fees for Major Non-Vehicular Sources (Adopted 9/15/92)
Rule 401 Visible Emissions (Adopted 8/6/76)
Rule 403 Particulate Matter Emissions (Adopted 8/6/76)
Rule 404 Sulfur Compounds Emission Standards, Limitations and Prohibitions (Revised 12/6/76)
Rule 405 Nitrogen Oxides Emission Standards, Limitations and Prohibitions (Adopted 11/16/93)
Rule 406 Carbon Monoxide Emission Standards, Limitations and Prohibitions (Adopted 11/14/84)
Rule 407 Organic Material Emission Standards, Limitations and Prohibitions (Adopted 5/22/96)
Rule 411 Surface Coating of Metal Parts and Products (Adopted 1/28/98)
Rule 416 Degreasing Operations (Adopted 6/18/79)
Rule 417 Control of Fugitive Emissions of Volatile Organic Compounds (Adopted 2/9/93)
Rule 419 Petroleum Pits, Ponds, Sumps, Well Cellars, and Wastewater Separators (Revised 7/12/94)
Rule 422 Refinery Process Turnarounds (Adopted 6/18/79)
Rule 425 Storage of Volatile Organic Compounds (Adopted 7/12/94)
Rule 427 Marine Tanker Loading (Adopted 4/26/95)
Rule 429 Oxides of Nitrogen and Carbon Monoxide Emissions from Electric Power Generation Boilers (Revised 11/12/97)
Rule 430 Control of Oxides of Nitrogen from Industrial, Institutional, Commercial Boilers, Steam Generators, and Process Heaters (Adopted 7/26/95)
Rule 431 Stationary Internal Combustion Engines (Adopted 11/13/96)
Rule 501 General Burning Provisions (Adopted 1/10/89)
Rule 503 Incinerator Burning, except B.1.a. (Adopted 2/7/89)
Rule 601 New Source Performance Standards (Adopted 5/28/97)

(6) *The following requirements are containing in Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*, February 2000:

Rule 102 Definitions (Adopted 5/20/99)
Rule 103 Severability (Adopted 10/23/78)
Rule 106 Notice to Comply for Minor Violations (Adopted 7/15/99)
Rule 201 Permits Required (Adopted 4/17/97)
Rule 202 Exemptions to Rule 201 (Adopted 4/17/97)
Rule 203 Transfer (Adopted 4/17/97)
Rule 204 Applications (Adopted 4/17/97)
Rule 205 Standards for Granting Applications (Adopted 4/17/97)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 4/17/97)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes-Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 4/17/97)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Adopted 9/18/97)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 7/18/96)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 1/25/94)
Rule 326 Storage of Reactive Organic Liquid Compounds (Adopted 12/14/93)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 4/21/95)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 4/17/97)
Rule 342 Control of Oxides of Nitrogen (NO_X) from Boilers, Steam Generators and Process Heaters) (Adopted 4/17/97)

Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 352 Natural Gas-Fired Fan-Type Central Furnaces and Residential Water Heaters (Adopted 9/16/99)
Rule 353 Adhesives and Sealants (Adopted 8/19/99)
Rule 359 Flares and Thermal Oxidizers (6/28/94)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 6/15/95)
Rule 505 Breakdown Conditions Sections A., B.1,. and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review (Adopted 4/17/97)
Rule 802 Nonattainment Review (Adopted 4/17/97)
Rule 803 Prevention of Significant Deterioration (Adopted 4/17/97)
Rule 804 Emission Offsets (Adopted 4/17/97)
Rule 805 Air Quality Impact Analysis and Modeling (Adopted 4/17/97)
Rule 808 New Source Review for Major Sources of Hazardous Air Pollutants (Adopted 5/20/99)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 4/17/97)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

(7) *The following requirements are contained in South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I, II and III), February 2000:

Rule 102 Definition of Terms (Adopted 6/13/97)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 3/6/92)
Rule 118 Emergencies (Adopted 12/7/95)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications (Adopted 1/5/90)
Rule 212 Standards for Approving Permits (Adopted 12/7/95) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Stack Monitoring (Adopted 8/7/81)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 12/13/96)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 5/9/97) except (e)(6) and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/9/97)
Rule 304.1 Analyses Fees (Adopted 5/9/97)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 5/9/97)
Rule 309 Fees for Regulation XVI Plans (Adopted 5/9/97)
Rule 401 Visible Emissions (Adopted 4/7/89)
Rule 403 Fugitive Dust (Adopted 2/14/97)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only (Adopted 7/12/96)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 11/17/95)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 3/5/82)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Organic Liquid Storage (Adopted 3/11/94)
Rule 465 Vacuum Producing Devices or Systems (Adopted 11/1/91)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77); Addendum to Regulation IV (Effective 1977)
Rule 518 Variance Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.1 Permit Appeal Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.2 Federal Alternative Operating Conditions (Adopted 1/12/96)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 6/13/97)
Rule 702 Definitions (Adopted 7/11/80)
Rule 704 Episode Declaration (Adopted 7/9/82)
Rule 707 Radio—Communication System (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)
Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
Rule 709 First Stage Episode Actions (Adopted 7/11/80)
Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)
Regulation IX—New Source Performance Standards (Adopted 1/9/98)
Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 3/8/96)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/14/97)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous- and Liquid-Fueled Internal Combustion Engines (Adopted 11/14/97)
Rule 1113 Architectural Coatings (Adopted 11/8/96)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 3/10/95)
Rule 1122 Solvent Degreasers (Adopted 7/11/97)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1129 Aerosol Coatings (rescinded 3/8/96)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/8/97)
Rule 1136 Wood Products Coatings (Adopted 6/14/96)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)

Rule 1146.2 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 1/9/98)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 7/14/95)
Rule 1168 Adhesive Applications (Adopted 2/13/98)
Rule 1171 Solvent Cleaning Operations (Adopted 9/13/96)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 5/13/94)
Rule 1176 VOC Emissions from Wastewater Systems (Adopted 9/13/96)
Rule 1301 General (Adopted 12/7/95)
Rule 1302 Definitions (Adopted 12/7/95)
Rule 1303 Requirements (Adopted 5/10/96)
Rule 1304 Exemptions (Adopted 6/14/96)
Rule 1306 Emission Calculations (Adopted 6/14/96)
Rule 1313 Permits to Operate (Adopted 12/7/95)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1605 Credits for the Voluntary Repair of On-Road Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1610 Old-Vehicle Scrapping (Adopted 5/9/97)
Rule 1612 Credits for Clean On-Road Vehicles (Adopted 9/8/95)
Rule 1620 Credits for Clean Off-Road Mobile Equipment (Adopted 9/8/95)
Rule 1701 General (Adopted 1/6/89)
Rule 1702 Definitions (Adopted 1/6/89)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 1/6/89)
Rule 1706 Emission Calculations (Adopted 1/6/89)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 9/9/94)
Rule 2000 General (Adopted 4/11/97)
Rule 2001 Applicability (Adopted 2/14/97)
Rule 2002 Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (Sox) Emissions (Adopted 2/14/97)
Rule 2004 Requirements (Adopted 7/12/96) except (l)
Rule 2005 New Source Review for RECLAIM (Adopted 2/14/97) except (i)
Rule 2006 Permits (Adopted 12/7/95)
Rule 2007 Trading Requirements (Adopted 12/7/95)
Rule 2008 Mobile Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 10/15/93)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions (Adopted 4/11/97)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 3/10/95)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions (Adopted 4/11/97)
Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 3/10/95)
Rule 2015 Backstop Provisions (Adopted 2/14/97) except (B)(1)(G) and (b)(3)(B)
Rule 2100 Registration of Portable Equipment (Adopted 7/11/97)
XXX Title V Permits
Rule 3000 General (Adopted 11/14/97)
Rule 3001 Applicability (Adopted 11/14/97)
Rule 3002 Requirements (Adopted 11/14/97)
Rule 3003 Applications (Adopted 11/14/97)
Rule 3004 Permit Types and Content (Adopted 11/14/97)
Rule 3005 Permit Revisions (Adopted 11/14/97)
Rule 3006 Public Participation (Adopted 11/14/97)
Rule 3007 Effect of Permit (Adopted 10/8/93)
XXXI Acid Rain Permit Program (Adopted 2/10/95)

(8) *The following requirements are contained in Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*, February 2000:

Rule 2 Definitions (Adopted 11/10/98)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 6/13/95)
Rule 11 Definition for Regulation II (Adopted 6/13/95)
Rule 12 Application for Permits (Adopted 6/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 6/13/95)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 23 Exemptions from Permits (Adopted 7/9/96)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 1/13/98)
Rule 26.2 New Source Review—Requirements (Adopted 1/13/98)
Rule 26.3 New Source Review—Exemptions (Adopted 1/13/98)
Rule 26.6 New Source Review—Calculations (Adopted 1/13/98)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 1/13/98)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 10/12/93)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 10/12/93)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 10/12/93)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 10/12/93)
Rule 33.5 Part 70 Permits—Time frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 10/12/93)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 10/12/93)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/6/98)
Rule 42 Permit Fees (Adopted 6/22/99)
Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 6/22/99)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants—Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 4/13/99)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 9/10/96)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 08/11/92)

Rule 74.6 Surface Cleaning and Degreasing (Adopted 11/10/98)
Rule 74.6.1 Cold Cleaning Operations (Adopted 7/9/96)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 7/9/96)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 3/10/98)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_X (Adopted 4/9/85)
Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 9/14/99)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 9/10/96)
Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1–5MM BTUs) (Adopted 6/13/95)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 1/14/97)
Rule 74.23 Stationary Gas Turbines (Adopted 10/10/95)
Rule 74.24 Marine Coating Operations (Adopted 9/10/96)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 11/10/98)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Adopted 9/10/96)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 76 Federally Enforceable Limits on Potential to Emit (Adopted 10/10/95)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Continuous Monitoring Systems (Adopted 2/9/99)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220 General Conformity (Adopted 5/9/95)

* * * * *

[FR Doc. 00–7327 Filed 3–23–00; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 102299B]

Atlantic Highly Migratory Species; Swordfish Quota Adjustment

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

ACTION: Adjustment of annual catch quotas.

SUMMARY: NMFS adjusts the June 1, 1999, through May 31, 2000, directed category quota for North Atlantic swordfish to account for underharvest from the prior fishing year. The directed category annual quota is adjusted to 2,427.38 metric tons dressed weight (mt dw). The 1999–2000 season for North Atlantic swordfish incidental catch category quota remains at 300 mt dw. The annual directed catch category quota for the South Atlantic swordfish fishery remains at 289 mt dw. This action is required under management measures adopted in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and is consistent with the criteria for swordfish quota transfers established at 50 CFR part 635.

DATES: Effective March 21, 2000.

FOR FURTHER INFORMATION CONTACT: Steve Meyers or Jill Stevenson at 301–713–2347; Fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: Analysis of reported landings for the directed North Atlantic swordfish fishery, the North Atlantic incidental swordfish fishery, and the South Atlantic directed swordfish fishery indicate that the quotas for those fisheries were not exceeded during the 1998 fishing year (June 1, 1998, through May 31, 1999). Under 50 CFR 635.27(c)(3)(ii), if total landings are above or below the specific North Atlantic swordfish annual quotas, they must be subtracted from, or added to, the following year's quota for that management area, provided quota modifications are consistent with applicable International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations. Further, any carryover adjustments to the 12-month directed catch quota for the North Atlantic swordfish fishery must to be apportioned equally between the two semiannual periods. Under 50 CFR 635.27(c)(2)(ii), incidental catch for North Atlantic swordfish may be reallocated to the directed catch quota if not expected to be taken in the incidental fishery before the end of the fishing year.

There is no ICCAT recommendation to modify the South Atlantic swordfish quota based on over or under harvests in prior years. Therefore, the annual quota for South Atlantic swordfish remains at the current quota level of 289 mt dw. There is no incidental catch quota in the South Atlantic swordfish fishery.

Adjusted Catch Quotas

The adjusted annual directed fishery quota for North Atlantic swordfish for the 1998 fishing year was 2,392.3 mt dw. The adjusted quota for incidental harvests of North Atlantic swordfish for the 1998 fishing year was 314.6 mt dw (64 FR 4059, January 27, 1999).

The initial annual directed fishery quota for North Atlantic swordfish for the 1999 fishing year (June 1, 1999, through May 31, 2000) was previously established at 2033.2 mt dw and is divided into two equal semiannual quotas of 1016.6 mt dw, one for June 1 through November 30, 1999, and the other for December 1, 1999, through May 31 of 2000 (63 FR 31710, June 10, 1998). The initial catch quota for incidental harvests of North Atlantic swordfish for the 1999 fishing year is 300 mt dw.

The harvest of North Atlantic swordfish in the directed catch category for the 1998 fishing year is estimated to be 2,308.3 mt dw, or 84.0 mt dw below the directed catch quota of 2,392.3 mt dw. Additionally, the harvest of North Atlantic swordfish in the incidental catch category for the 1998 fishing year was 4.4 mt dw, or 310.2 mt dw below the incidental catch quota of 314.6 mt dw.

The 84.0 mt dw underage from the directed catch quota and the 310.2 mt dw underage from the incidental catch quota for the 1998 fishing year are added to the directed catch quota for the 1999 fishing year, for a revised North Atlantic swordfish directed catch quota of 2,427.4 mt dw. This adjusted annual quota is divided into 2 equal semiannual catch quotas of 1,213.7 mt dw, one for June 1, 1999, through November 30, 1999, and the other for December 1, 1999, through May 31, 2000. NMFS is currently examining landings reports from the first semi-

annual period to determine if adjustments to the second period are required. Projections based on preliminary data from June 1, 1999, through January 31, 2000, suggest that a closure of the directed swordfish fishery prior to May 31, 2000, given the adjusted annual directed swordfish quota, will not be needed.

The incidental catch quota remains at 300 mt dw for the 1999 fishing year.

Under the swordfish limited access program established under the 1999 HMS FMP and implemented at 50 CFR 635.16, NMFS has issued incidental catch permits, and all catch by vessels so permitted will now be applied to the incidental catch quota. Thus, it is premature to consider reallocation of the incidental catch quota until NMFS examines logbooks of vessels with incidental catch permits.

Classification

This action is taken under 50 CFR 635.27(c). This action is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: March 20, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–7322 Filed 3–21–00; 3:50 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 58
Friday, March 24, 2000

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AI81

Locality-Based Comparability Payments

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing proposed regulations to clarify and redefine the limitations on locality rates of pay for categories of non-General Schedule employees approved by the President's Pay Agent to receive locality-based comparability payments. This proposed change was prompted by a recent Executive order that delegated the President's authority to establish such limitations to the President's Pay Agent. The proposed regulations would ensure that all employees receiving locality payments are treated consistently.

DATES: Comments must be received on or before May 23, 2000.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200 (FAX: (202) 606–0824 or email: payleave@opm.gov).

FOR FURTHER INFORMATION CONTACT: Vincent Donahue, (202) 606–2858, FAX: (202) 606–0824, or email: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) proposes to revise the locality pay regulations in subpart F of part 531 of title 5, Code of Federal Regulations, to clarify and redefine the limitations on locality rates of pay for categories of non-General Schedule employees approved by the President's Pay Agent to receive locality payments. Section 8 of Executive Order 13106 of December 7, 1998, delegated the President's authority under section 5304(g) of title 5, United States Code, to determine such limitations to the President's Pay Agent. To provide consistent treatment between General Schedule (GS) and non-GS employees receiving locality payments, OPM proposes to provide that (1) non-GS positions whose maximum scheduled annual rate of pay is less than or equal to the maximum payable scheduled annual rate of pay for GS–15 will be subject to a locality pay cap equal to the rate for level IV of the Executive Schedule, and (2) non-GS positions whose maximum scheduled annual rate of pay exceeds the maximum payable scheduled annual rate of pay for GS–15, but is not more than the rate for level IV of the Executive Schedule, will be subject to a locality pay cap equal to the rate for level III of the Executive Schedule. (See the definition of *scheduled annual rate of pay* in 5 CFR 531.602, as revised in these proposed regulations.)

Background

Locality-based comparability payments are authorized under 5 U.S.C. 5304. By law, locality payments automatically apply to General Schedule employees. The maximum rate of basic pay (excluding locality payments) for GS employees is the rate for GS–15, step 10, subject to a cap linked to the rate of pay for level V of the Executive Schedule. (See 5 U.S.C. 5303(f).) GS rates of basic pay adjusted by locality payments are capped at the rate of pay for level IV of the Executive Schedule. (See 5 U.S.C. 5304(g)(1).)

The locality pay law provides that the President may extend locality payments to various groups outside the GS pay system, such as members of the Senior Executive Service (SES), administrative law judges (ALJs), and other groups for which basic pay is limited to no more than the rate of pay for level IV of the Executive Schedule. (See 5 U.S.C. 5304(h).) Executive Order 12883 of November 29, 1993, provided that the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management) may act for the President in exercising the authority to extend locality payments to such non-GS groups.

Section 5304(g) of title 5, United States Code, provides that locality rates approved for certain categories of non-GS employees specified in 5 U.S.C. 5304(h)(1)(A)–(E), including members of the SES and ALJs, are capped at the rate for level III of the Executive Schedule. Section 5304(g) provides that a level III locality pay cap applies to ''any positions under subsection (h)(1)(F) which the President may determine.'' Subsection (h)(1)(F) is a catch-all category of non-GS positions to which locality pay may be extended. This catch-all category includes Executive agency positions not otherwise listed in the law whose rates of basic pay are limited to not more than the rate for level IV of the Executive Schedule. If the President determines that a level III cap does not apply to a particular category of non-GS positions, the locality pay cap for those positions is automatically set at level IV of the Executive Schedule (*i.e.*, the locality pay cap for GS employees). (See 5 U.S.C. 5304(g)(1).)

Since the inception of locality pay in January 1994, the President's Pay Agent has approved locality pay for a number of non-GS categories of positions under its delegated authority. However, Executive Order 12883 did not delegate to the Pay Agent the President's authority to determine whether the level IV or level III locality pay cap should apply to any group of non-GS positions under 5 U.S.C. 5304(h)(1)(F) to whom locality pay is extended. Locality pay extension decisions for these positions were interpreted as automatically carrying a level III cap. (See 5 CFR 531.604(c).) Section 8 of Executive Order 13106 of December 7, 1998, has now delegated to the Pay Agent the President's authority to determine when the level III cap should apply to such non-GS employees.

Proposed Regulations

The proposed regulations provide a rule for determining the locality pay cap for non-GS positions for which the President's Pay Agent approves the extension of locality payments. We propose to amend 5 CFR 531.604 to clarify that a locality rate of pay may not exceed the rate for level III of the Executive Schedule for categories of positions specified in 5 U.S.C. 5304(h)(1)(A)–(E) (*e.g.*, members of the SES and ALJs). The proposed revision of

§ 531.604 also provides that, for categories of non-GS employees under 5 U.S.C. 5304(h)(1)(F), locality rates of pay may not exceed (1) the rate for level IV of the Executive Schedule, if the maximum scheduled annual rate of pay for such positions is less than or equal to the maximum payable scheduled annual rate of pay for GS–15, or (2) the rate for level III of the Executive Schedule, if the maximum scheduled annual rate of pay for such positions exceeds the maximum payable scheduled annual rate of pay for GS–15, but is not more than the rate for level IV of the Executive Schedule. (See the definition of *scheduled annual rate of pay* in 5 CFR 531.602, as revised in these proposed regulations.)

This proposed rule would fulfill the original intent of the locality pay law by not automatically providing a level III cap on locality payments for all groups of non-GS employees. This change would also provide for more consistent and equitable treatment of GS and non-GS employees receiving locality payments. For example, non-GS employees with a maximum scheduled annual rate of pay that is no higher than the rate of basic pay for GS–15, step 10, would have the same locality pay cap as GS employees.

The proposed regulations include pay protection for any employee who otherwise would suffer a reduction in his or her locality rate of pay under the proposed locality pay cap provisions. Although no employee would suffer an immediate reduction in pay, it is possible that the locality pay cap for a group of non-GS employees could be reduced from level III to level IV of the Executive Schedule as GS rates of basic pay increase. This could occur if the rate of basic pay for GS–15, step 10, becomes equal to or exceeds the maximum scheduled annual rate of pay for a non-GS group. To prevent reductions in pay that would otherwise occur, the regulations cap an affected employee's locality rate at the higher of (1) his or her locality rate on the day before the scheduled annual rate of pay for GS–15, step 10, becomes equal to or exceeds the maximum scheduled annual rate of pay for the group of non-GS employees or (2) the rate for level IV of the Executive Schedule. This means that the employee's locality rate would be frozen until it is exceeded by the rate for level IV of the Executive Schedule.

The proposed regulations exclude experts and consultants appointed under 5 U.S.C. 3109 from the locality pay limitations. Unless otherwise authorized by law, the aggregate pay (including basic pay, locality pay, and premium pay) for experts and consultants appointed under 5 U.S.C. 3109 may not exceed the daily rate for GS–15, step 10 (excluding locality pay or any other additional pay). (See 5 CFR 304.105.)

The proposed regulations also clarify the definition of *employee* in § 531.602 to include positions in the Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) SES under 5 U.S.C. 5304(h)(1)(C) and other non-GS employee categories under § 5304(h)(1)(F) for which the President's Pay Agent has authorized locality payments. The regulations also amend paragraph (4) in the definition of *scheduled annual rate of pay* in § 531.602 to include the rates of basic pay for employees in the FBI and DEA SES and other categories of non-GS positions for which the Pay Agent has authorized locality pay. The proposed regulations clarify that the scheduled annual rate of pay for such employees must exclude any locality-based pay adjustments, special basic pay adjustments analogous to special salary rates established under 5 U.S.C. 5305, or other additional pay of any kind.

This rule has been reviewed and approved by the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management).

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend part 531 of title 5 of the Code of Federal Regulations as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

Subpart F—Locality-Based Comparability Payments

2. In § 531.602, paragraph (2) of the definition of *employee* and paragraph (4) of the definition of *scheduled annual rate of pay* are revised to read as follows:

§ 531.602 Definitions

* * * * *

Employee * * *

(2) An employee in a category of positions described in 5 U.S.C. 5304(h)(1)(A)–(F) for which the President (or designee) has authorized locality-based comparability payments under 5 U.S.C. 5304(h)(2) and whose official duty station is located in a locality pay area.

* * * * *

Scheduled annual rate of pay * * *

(4) For an employee in a category of positions described in 5 U.S.C. 5304(h)(1)(A)–(F) for which the President (or designee) has authorized locality-based comparability payments under 5 U.S.C. 5304(h)(2), the rate of basic pay fixed by law or administrative action, exclusive of any locality-based adjustments (including adjustments equivalent to local special rate adjustments under 5 U.S.C. 5305) or other additional pay of any kind.

3. In § 531.604, paragraph (c) is revised and a new paragraph (d) is added to read as follows:

§ 531.604 Determining locality rates of pay.

* * * * *

(c)(1) Locality rates of pay approved by the President (or designee) for employees in a category of positions described in 5 U.S.C. 5304(h)(1)(A)–(E) may not exceed the rate for level III of the Executive Schedule.

(2) Locality rates of pay approved by the President (or designee) for employees in a category of positions described in 5 U.S.C. 5304(h)(1)(F) may not exceed—

(i) The rate for level IV of the Executive Schedule, when the maximum scheduled annual rate of pay (excluding any retained rate) for such positions is less than or equal to the maximum payable scheduled annual rate of pay for GS–15; or

(ii) The rate for level III of the Executive Schedule, when the maximum scheduled annual rate of pay (excluding any retained rate) for such positions exceeds the maximum payable scheduled annual rate of pay for GS–15, but is not more than the rate for level IV of the Executive Schedule.

(3) If application of paragraph (c)(2) of this section would otherwise reduce an employee's existing locality rate of pay, the employee's locality rate of pay will be capped at the higher of—

(i) The amount of his or her locality rate of pay on the day before paragraph (c)(2) of this section is applied, or

(ii) The rate for level IV of the Executive Schedule.

(d) Paragraph (c) of this section does not apply to experts and consultants appointed under 5 U.S.C. 3109 if the pay for those experts and consultants is limited to the highest rate payable under 5 U.S.C. 5332 (*i.e.,* the unadjusted maximum GS–15 rate). Pay limitations for such experts and consultants must be determined in accordance with § 304.105 of this chapter.

[FR Doc. 00–7256 Filed 3–23–00; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 99–038–2]

Tuberculosis in Cattle, Bison, Goats, and Captive Cervids; State and Zone Designations; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: We are correcting an error in a proposed rule that would amend the bovine tuberculosis regulations. This proposed rule was published in the **Federal Register** on March 7, 2000 (65 FR 11912–11940, Docket No. 99–038–1).

DATES: We invite you to comment on the proposed rule (Docket No. 99–038–1), as corrected by this document. We will consider all comments that we receive by April 21, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–038–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–038–1.

You may read any comments that we receive on Docket No. 99–038–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Van Tiem, Senior Staff Veterinarian, VS, APHIS, USDA, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7716.

SUPPLEMENTARY INFORMATION: We published in the **Federal Register** on March 7, 2000, (65 FR 11912–11940, Docket No. 99–038–1), a proposed rule to amend the bovine tuberculosis regulations (9 CFR part 77).

There are several errors in that document. The first is in proposed § 77.10(b), which sets forth the requirements for the interstate movement of certain cattle and bison from States and zones listed as modified accredited advanced with regard to tuberculosis. It provides that if cattle or bison to be moved interstate from a modified accredited advanced State or zone are steers or spayed heifers, or are officially identified sexually intact heifers to be moved to an approved feedlot, the animals may be moved interstate without restriction.

However, as explained in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, any such animals moved interstate, *if they are not individually identified by a registration name and number, would be required to be officially identified.*

The other errors are in subpart C, ''Captive Cervids,'' in the lists of States and zones with regard to tuberculosis risk classifications for captive cervids. These classifications appear in § 77.22(a) and (b) for accredited free States and zones, § 77.24(a) and (b) for modified accredited advanced States and zones, § 77.26(a) and (b) for modified accredited States and zones, § 77.28(a) and (b) for accreditation preparatory States and zones, and § 77.30(a) and (b) for nonaccredited States and zones. As set forth in the proposed rule, all States and zones are classified as either modified accredited or accreditation preparatory, and that is not correct. As explained in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, only some States and zones should be classified as modified accredited or accreditation preparatory for captive cervids. The remainder should be classified as accredited-free or modified accredited advanced.

This document corrects proposed §§ 77.10(b), 77.22(a) and (b), 77.24(a), 77.26(a) and (b), and 77.28(a) as follows so that they are consistent with the explanations in the **SUPPLEMENTARY INFORMATION** section of the proposed rule.

PART 77—[CORRECTED]

1. On page 11928, column 1, § 77.10(b) is corrected to read as follows:

§ 77.10 Interstate movement from modified accredited advanced States and zones.

* * * * *

(b) Cattle or bison may be moved interstate if they are steers or spayed heifers, or are officially identified sexually intact heifers moved to an approved feedlot. All cattle and bison so moved that are not individually identified by a registration name and number must be officially identified.

* * * * *

2. On page 11931, column 3, § 77.22(a) and (b) are corrected to read as follows:

§ 77.22 Accredited-free States or zones.

(a) The following are accredited-free States: Alaska, Colorado, Hawaii, Idaho, Indiana, Louisiana, Maine, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New York, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Utah, Vermont,Virginia, Washington, and Wyoming.

(b) The following are accredited-free zones: That part of Michigan other than the zone described in § 77.26(b).

* * * * *

3. On page 11932, column 1, § 77.24(a) is corrected to read as follows:

§ 77.24 Modified accredited advanced States or zones.

(a) The following are modified accredited advanced States: Arizona, California, Florida, Georgia, Kansas, Kentucky, Mississippi, Missouri, New

Jersey, North Carolina, Pennsylvania, Tennessee, and Wisconsin.

* * * * *

4. On page 11932, column 3, § 77.26(a) and (b) are corrected to read as follows:

§ 77.26 Modified accredited States or zones.

(a) The following are modified accredited States: None.

(b) The following are modified accredited zones: A zone in Michigan delineated by starting at the juncture of State Route 55 and Interstate 75, then heading northwest and north along Interstate 75 to the Straits of Mackinac, then southeast and south along the shoreline of Michigan to the eastern terminus of State Route 55, then west along State Route 55 to Interstate 75.

* * * * *

5. On page 11933, column 2, § 77.28(a) is corrected to read as follows:

§ 77.28 Accreditation preparatory States or zones.

(a) The following are modified accredited States: Alabama, Arkansas, Connecticut, Delaware, Illinois, Iowa, Maryland, Massachusetts, New Mexico, Ohio, Puerto Rico, Rhode Island, the Virgin Islands of the United States, and West Virginia.

* * * * *

Done in Washington, DC, this 21st day of March 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–7445 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–44]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4164, PW4168, and PW4168A Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney PW4164, PW4168, and PW4168A series turbofan engines. AD 98–04–14 currently requires initial and repetitive torque checks for loose or broken front pylon mount bolts, replacement, if necessary, with new bolts, and establishment of a new cyclic life limit. This action would add initial and repetitive torque checks of new material MP159 front pylon mount bolts. In addition, this action would add initial and repetitive visual inspections of the primary mount thrust load path. This proposal is prompted by the introduction into service of the new MP159 front pylon mount bolts and the determination through fatigue testing that the forward engine mount bearing housings have insufficient fatigue life expectancy. The actions specified by the proposed AD are intended to prevent front pylon mount bolt and primary mount thrust load path failure, which could result in engine separation from the aircraft.

DATES: Comments must be received by April 24, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-ANE–44, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8860, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7130, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–ANE–44.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–44, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On February 6, 1998, the Federal Aviation Administration (FAA) issued airworthiness directive AD 98–04–14, Amendment 39–10326 (63 FR 9730, February 26, 1998), applicable to Pratt & Whitney (PW) PW4164, PW4168, and PW4168A series turbofan engines. That AD requires initial and repetitive inspections for loose or broken front pylon mount bolts, replacement, if necessary, with new bolts, and establishment of a new cyclic life limit of 11,000 cycles in service (CIS) for INCO 718 material bolts. That action was prompted by flight testing that revealed higher than predicted loads for front pylon mount bolts, resulting in decreased service life. That condition, if not corrected, could result in front pylon mount bolt failure, which could result in engine separation from the aircraft.

Events Since the Issuance of the AD

Since the issuance of that AD, PW introduced a new material bolt to address the fatigue life shortfall of the original INCO 718 material bolts, part number (P/N) 54T670. MP159 material bolts, P/N 51U615, do not require a life limit. However, in a bolt-out configuration, fatigue testing indicated that there was insufficient margin to meet the 8,000 cycles-in-service (CIS)

minimum inspection requirement for the aircraft. Therefore, the FAA determined a repetitive torque check interval of 1,000 CIS, plus or minus 250 CIS, to be consistent with the torque check interval required for the INCO 718 material bolts, P/N 54T670.

In addition, fatigue testing of the secondary thrust load path using the measured flight loads demonstrated that with a primary thrust load path failure, there is insufficient fatigue life expectancy of the forward engine mount bearing housing. Therefore, a repetitive visual inspection of the primary mount thrust load path at a 1,000 CIS, plus or minus 250 CIS, interval is required

Service Information

The FAA has reviewed and approved the technical contents of the following PW Service Bulletins (SBs):

• No. PW4G–100–A71–20, dated December 9, 1999, that describes procedures for torque checking MP159 material bolts, P/N 51U615.

• No. PW4G–100–A71–18, dated September 15, 1999, that describes procedures for visually inspecting the primary mount thrust load path.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–04–14 to maintain the inspections of the INCO 718 material bolts, P/N 54T670, and replacement, if necessary, with serviceable parts. This superseding AD would also maintain the life limit of 11,000 CSN for the INCO 718 material bolts, P/N 54T670. However, based on a comment received to AD 98–04–14, the initial torque check would now be required for bolts with 1,000 or fewer CSN before accumulating 1,250 CSN, or 250 CIS after the effective date of this AD, whichever occurs first.

New Actions

This AD would also require initial and repetitive torque checks of MP159 material bolts, P/N 51U615, and the primary mount thrust load path. If any of the bolts are found loose or broken, all four bolts must be replaced with serviceable bolts.

Also, this AD would require initial and repetitive visual inspections of the primary mount thrust load path. If any components of the primary mount thrust load path are found cracked, then this AD would require replacement with serviceable parts.

Economic Analysis

There are approximately 75 engines of the affected design in the worldwide fleet. The FAA estimates that 10 engines installed on aircraft of US registry would be affected by this proposed AD, that it would take approximately 3 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $18,832 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $190,120.

Agency Findings

This proposal does not have federalism implications, as defined in Executive Order 13132, because it would 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 the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10326, (63 FR 9730, February 26, 1998), and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 97–ANE–44. Supersedes AD 98–04–14, Amendment 39–10326.

Applicability: Pratt & Whitney (PW) PW4164, PW4168, and PW4168A series turbofan engines, with front pylon mount bolts, part numbers (P/Ns) 54T670 or 51U615, installed. These engines are installed on but not limited to Airbus Industrie A330 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine 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 engines 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 front pylon mount bolt and primary mount thrust load path failure, which could result in engine separation from the aircraft, accomplish the following:

INCO 718 Material Bolts Torque Checks

(a) Perform initial and repetitive torque checks of INCO 718 material front pylon mount bolts, P/N 54T670, and replace, if necessary, with new bolts, in accordance with the Accomplishment Instructions of Pratt & Whitney Service Bulletin (SB) No. PW4G–100–A71–9, Revision 1, dated November 24, 1997, as follows:

(1) For front pylon mount bolts, P/N 54T670, with 1,000 or fewer cycles-since-new (CSN) on the effective date of this AD, perform torque checks in accordance with Part (A) of the Accomplishment Instructions of the SB at the earliest of:

(i) Before accumulating 1,250 CSN, or

(ii) Within 250 cycles-in-service (CIS) after the effective date of this AD, or

(iii) The next engine removal for any cause.

(2) Thereafter, perform torque checks at intervals not less than 750 or greater than 1,250 CIS since last torque check, not to exceed 11,000 CSN, in accordance with Part (A) of the Accomplishment Instructions of the SB.

(3) For front pylon mount bolts, P/N 54T670, with more than 1,000 CSN but less than 5,750 CSN on the effective date of this AD, accomplish the following:

(i) Perform an initial torque check within 250 CIS after the effective date of this AD, or at the next engine removal for any cause, whichever occurs first, in accordance with Part (A) of the Accomplishment Instructions of the SB.

(ii) Thereafter, perform torque checks at intervals not less than 750 or greater than 1,250 CIS since last torque check, not to exceed 11,000 CSN.

(4) For front pylon mount bolts, P/N 54T670, with 5,750 or more CSN but less

than 8,000 CSN on the effective date of this AD, accomplish the following in accordance with Part (B) of the Accomplishment Instructions of the SB:

(i) Perform an initial torque check within 250 CIS after the effective date of this AD, or prior to the next engine removal for any cause, whichever occurs first.

(ii) Thereafter, perform torque checks at intervals not less than 750 or greater than 1,250 CIS since last torque check, not to exceed 11,000 CSN.

(5) For front pylon mount bolts, P/N 54T670, with 8,000 or more CSN but less than 11,000 CSN on the effective date of this AD, perform an inspection in accordance with the schedule and procedures of the Appendix to the SB.

(6) Prior to further flight, replace all four bolts in accordance with Part (A), Paragraph 1(D) of the Accomplishment Instructions of the SB, if any are found loose or broken.

INCO 718 Material Bolts Life Limit

(b) This AD establishes a new life limit of 11,000 CSN for front pylon mount bolts, P/N 54T670. Except as provided in paragraph (e) of this AD, no front pylon mount bolts, P/N 54T670, may exceed this new life limit after the effective date of this AD.

MP159 Material Bolts Inspections

(c) Perform initial and repetitive torque checks of front pylon mount bolts, P/N 51U615, in accordance with the Accomplishment Instructions of PW SB PW4G–100–A71–20, dated December 9, 1999, as follows:

(1) Perform the initial torque check at the earliest of the following:

(i) Before accumulating 1,250 CSN, or

(ii) Within 250 CIS after the effective date of this AD, or

(iii) The next engine removal for any cause.

(2) Thereafter, perform torque inspections at intervals not less than 750 or greater than 1,250 CIS since last torque inspection.

(3) Prior to further flight, replace all four bolts, if any are found loose or broken.

Primary Mount Thrust Load Path Inspections

(d) Perform initial and repetitive visual inspections of the primary mount thrust load path, in accordance with the Accomplishment Instructions of PW4G–100–A71–18, dated September 15, 1999, as follows:

(1) Perform the initial visual inspection at the earliest of the following:

(i) Before accumulating 1,250 CSN, or

(ii) Within 250 CIS after the effective date of this AD, or

(iii) The next engine removal for any cause.

(2) Thereafter, perform visual inspections at intervals not less than 750 or greater than 1,250 CIS since last visual inspection.

(3) Prior to further flight, replace all cracked parts with serviceable parts.

Alternative Methods of Compliance

(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, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Ferry Flights

(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 inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on March 17, 2000.

Mark C. Fulmer,

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

[FR Doc. 00–7225 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–82–AD]

Airworthiness Directives; Eurocopter France Model AS332L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS332L2 helicopters. This proposal would require inspecting for interference between the transmission flexible mounting plate (plate) and the forward and aft shims (shims), replacing shims and repairing the plate if interference is found, and inspecting the plate for a broken plate slat (slat) and repairing the plate if a broken slat is found or replacing the plate if slat damage beyond repair limits is found. This proposal is prompted by the discovery that several helicopters were manufactured with shims that did not have cutouts to permit relative motion between the plate slats and the shims without interference. The actions specified by the proposed AD are intended to prevent cracking of the plate slats, increased helicopter vibration, loss of transmission mounting integrity, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 23, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–82–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, 2601 Meacham Blvd., Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–82–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–82–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model AS332L2 helicopters. The DGAC advises that interference between the plate and the shims on the transmission deck can cause damage, which can lead to incipient slat cracks.

Eurocopter France has issued Eurocopter AS 332 Service Bulletin No. 05.00.54, dated July 8, 1999, which specifies ensuring that there is no interference between the plate and the shims on the transmission deck and ensuring that there are no broken slats. If broken slats are found, the service bulletin specifies procedures for replacing the plate. If interference is found, it specifies procedures for replacing the shims and repairing the plate or replacing the plate if slat damage is beyond repair limits. The DGAC classified this service bulletin as mandatory and issued AD 1999–329–015(A), dated August 11, 1999, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) 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.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS332L2 helicopters of the same type design registered in the United States, the proposed AD would require inspecting for interference between the plate, part number (P/N) 332A38–0106–00, the forward shim, P/N 332A22307420, and the aft shim, P/N 332A22307020, and replacing shims and repairing the plate if interference is found; and inspecting the plate for broken slats and repairing the plate if broken slats are found or replacing the plate if slat damage beyond repair limits is found. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 1 helicopter of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per helicopter to accomplish the inspections, 80 work hours to accomplish the shim replacements and the plate repair, if necessary, and installation of Eurocopter France MOD 0725946 and MOD 0726012, and that the average labor rate is $60 per work hour. Required parts would cost approximately $4,126 for a forward shim; $4,052 for an aft shim; and $53,022 for a plate. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $66,060 to accomplish the inspections and all the replacements and repair, if necessary, and installation of both MODs.

The regulations proposed herein would 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 the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter France: Docket No. 99–SW–82–AD.

Applicability: Model AS332L2 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must 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 within 50 hours time-in-service (TIS) or within 50 hours TIS after accumulating 1,000 hours TIS on the transmission flexible mounting plate (plate), whichever occurs last, unless accomplished previously.

To prevent cracking of the plate slats, increased helicopter vibration, loss of transmission mounting integrity, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect for interference between the plate, part number (P/N) 332A38–0106–00, the forward shim, P/N 332A22307420, and the aft shim (shim), P/N 332A22307020, in accordance with paragraph 2.B.1 of the Accomplishment Instructions in Eurocopter AS 332 Service Bulletin No. 05.00.54, dated July 8, 1999 (SB). If interference is found, replace the shims and repair the plate in accordance with paragraph 2.B.3 of the Accomplishment Instructions in the SB before further flight.

(b) Visually inspect the plate for a broken slat. If a broken slat is found, replace the plate and the shims with an airworthy plate and shims in accordance with paragraph 2.B.3 of the SB before further flight. Replace the plate with an airworthy plate if slat damage beyond repair limits is found.

(c) Install Eurocopter France MOD 0725946 and Eurocopter France MOD 0726012 at the next major inspection or when the transmission is next removed, whichever occurs first. Installation of both MOD's is considered a terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through

an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

(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 helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 1999–329–015(A), dated August 11, 1999.

Issued in Fort Worth, Texas, on March 17, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–7338 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–01–AD]

Airworthiness Directives; Bell Helicopter Textron Inc.-Manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) applicable to Bell Helicopter Textron Inc. (BHTI)-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters. This AD would require removing and replacing certain main rotor mast (mast) assemblies. This proposal is prompted by the crash of a BHTI-manufactured Model UH–1B due to failure of a thin-wall mast installed on the helicopter. The actions specified by the proposed AD are intended to prevent fatigue failure of the mast and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 8, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–01–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–01–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–01–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new airworthiness directive (AD) for BHTI-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters. This AD would require removing any mast assembly, part number (P/N) 204–011–450–001 or –005, and replacing it with an airworthy mast assembly. This proposal is prompted by the crash of a BHTI-manufactured Model UH–1B due to failure of a thin-wall mast assembly, P/N 204–011–450–001, as the result of undetected fatigue cracking in the stabilizer bar damper spline. Metallurgical examination of the failed part by the National Transportation Safety Board (NTSB) Materials Laboratory revealed fatigue features on the crack faces adjacent to the upper groove on the stabilizer bar damper splice. Several other cracks were noted in the same area during visual examination. The mast was reported to have accumulated 4006 hours time-in-service. As a result of the accident investigation, the NTSB recommended among other things that the FAA issue an AD requiring that ''thin-walled'' rotor masts be replaced with ''thick-walled'' rotor masts. The FAA agrees with this recommendation. This condition, if not corrected, could result in fatigue failure of the mast and subsequent loss of control of the helicopter.

The FAA has reviewed Garlick Helicopters, Inc. Service Bulletin UH1–97–06, dated September 26, 1997, which describes procedures for removing all mast tubes, P/N 204–011–450–001, from service for Garlick's type-certificated Model HH–1K, TH–1F, TH–1L, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters. The service bulletin also establishes a maximum torque event cycle count of 300,000 for the P/N 204–011–450 (all other dashes) mast tube.

Since an unsafe condition has been identified that is likely to exist or develop on other Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters of the same type designs, the proposed AD would require removing any mast assembly, P/N 204–011–450–001 or –005, from service and replacing it with an airworthy mast assembly.

The FAA estimates that 75 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Replacing a mast assembly would cost approximately

$8,862. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $709,650 to replace all the masts in the fleet.

The regulations proposed herein would 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 the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Firefly Aviation Helicopter Services (Previously Erickson Air Crane Co.); Garlick Helicopters, Inc.; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Tamarack Helicopters, Inc. (Previously Ranger Helicopter Services, Inc.); Robinson Air Crane, Inc.; Williams Helicopter Corporation (Previously Scott Paper Co.); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation; Utah State University; Western International Aviation, Inc.; and U.S. Helicopter, Inc.; Docket No. 2000–SW–01–AD.

Applicability: Bell Helicopter Textron Inc.-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters with a main rotor mast (mast) assembly, part number (P/N) 205–011–450–001 or –005, installed, certificated in any category.

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

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

To prevent fatigue failure of the mast and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove any mast assembly, part number (P/N) 204–011–450–001 or –005, from service. Replace with an airworthy mast assembly. Neither P/N 204–011–450–001 nor 204–011–450–005 are eligible for installation on any affected helicopter.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

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

Issued in Fort Worth, Texas, on March 17, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–7339 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 040–0223b; FRL–6563–4]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution Control District, Monterey Bay Unified Air Pollution Control District, and Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from architectural coatings.

The intended effect of this action is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by April 24, 2000.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Floor, Ventura, CA 93003.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.
Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION:

This document concerns Ventura County Air Pollution Control District Rule 74.2, Architectural Coatings, submitted to EPA by the California Air Resources Board (CARB) on November 12, 1992; Monterey Bay Unified Air Pollution Control District Rule 426, Architectural Coatings, and Santa Barbara County Air Pollution Control District Rule 323, Architectural Coatings both submitted to EPA by the CARB on March 3, 1997. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: March 10, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–7228 Filed 3–23–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 152 and 156

[OPP–36190B; FRL–6551–1]

RIN 2070–AC46

Equivalency of Pesticides Metolachlor and S-metolachlor With Respect to Ground Water Contamination; Supplemental Notice of Availability and Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental Notice of Availability and extension of comment period.

SUMMARY: The Agency is providing supplemental information for an existing Notice of Availability and Request for Comment (65 FR 8925, February 23, 2000) and an extension of the original comment period. The original Notice provided an opportunity for the public and affected parties to submit comments on whether additional information shows that metolachlor and S-metolachlor are equivalent with respect to leaching and potential ground water contamination. EPA is seeking comment on the specific information that is being made available, which is described in this document, and is extending the original comment period by 30 days.

DATES: Comments, identified by the docket control number OPP–36190B, must be received on or before April 24, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–36190B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Arthur-Jean B. Williams, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–5239; fax number: 703–308–3259; e-mail address: williams.artry@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This supplemental notice of data availability and request for comment is directed to the public in general. It may, however, be of particular interest to you if you register, distribute, apply, or manage the application of a pesticide that contains optically active isomeric active ingredients and, in particular, a product enriched for one (usually more pesticidally active) optical isomer. In addition, persons commenting on the Ground Water and Pesticide Management Plan proposal (61 FR 33260, June 26, 1996) (FRL–4981–9) may be particularly interested in some or all of these data. Since others may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

In person. The Agency has established an official record for this action under docket control number OPP–36190B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit your comments through the mail, in person, or electronically. Please follow the instructions that are provided below. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket control number OPP–36190B in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave NW, Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters

and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–36190B. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this proposed rule extension.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is EPA Taking?

EPA is providing supplemental information on S-metolachlor and is extending the comment period for 30 days.

B. What Additional Data is EPA Making Available for Comment?

1. Novartis Study No. 381–97, in response to EPA Review of CGA–77102 Ecological Toxicology Studies, June 11, 1997.

2. Novartis Study No. 314–97, in response to EPA Review of CGA–77102/Metolachlor Environmental Fate Studies, June 6, 1997.

C. Why is EPA Seeking Comment on This Additional Data?

Three commenters requested an extension of the comment period. Of these, one commenter to the February 23, 2000, Notice of Availability and Request for Comment argued that additional information on S-metolachlor it had provided to EPA also warranted public comment. EPA is noticing that here.

III. Do Any Regulatory Assessment Requirements Apply to this Action?

No. This action is not a rule, it merely announces the availability of and requests comments on supplemental information related to a previous Notice (65 FR 8925, February 23, 2000) and extends the date by which public comments must be submitted to EPA. This information is related to, among other things, a proposed rule that previously published in the **Federal Register** of June 26, 1996 (61 FR 33260). For information about the applicability of the regulatory assessment requirements to that proposed rule, which published in the **Federal Register**, please refer to the discussion in Unit VIII of that document.

List of Subjects

40 CFR Part 152

Environmental protection, Administrative practice and procedure, Pesticides and pest, Reporting and recordkeeping requirements.

40 CFR Part 156

Environmental protection, Labeling, Occupational safety and health, Pesticides and pest, Reporting and recordkeeping requirements.

Dated: March 20, 2000.

Susan H. Wayland,

Acting Assistant Adminstrator for Prevention, Pesticides, and Toxic Substances.

[FR Doc. 00–7446 Filed 3–22–00; 2:08 pm]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–541, MM Docket No. 99–163, RM–9595]

Radio Broadcasting Services; Jackpot, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: The Commission denies the request of Mountain West Broadcasting to allot Channel 287C1 to Jackpot, NV, as its first local aural service for failure to provide sufficient information to demonstrate that it is a community for allotment purposes. *See* 64 FR 2842, May 26, 1999. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–163, adopted March 1, 2000, and released March 10, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7257 Filed 3–23–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–543; MM Docket No. 00–41, RM–9369]

Radio Broadcasting Services; Oakville, Raymond and South Bend, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Jodesha Broadcasting, Inc., proposing the reallotment of Channel 249C1 from Raymond to Oakville, Washington, and the modification of Station KFMY(FM)'s license accordingly; the reallotment of Channel 289C2 from South Bend to Raymond, Washington, and the modification of Station KJET(FM)'s license accordingly; and the allotment of Channel 300A at South Bend, Washington. Channel 249C1 can be reallotted to Oakville in compliance with the Commission's minimum distance separation requirements with respect to all domestic allotments at petitioner's requested site. The coordinates for Channel 249C1 at Oakville are 46–57–14 North Latitude and 123–29–21 West Longitude. See Supplementary Information, infra.

DATES: Comments must be filed on or before May 1, 2000, reply comments on or before May 18, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David Tillotson, Esq., 4606 Charleston Terrace, NW., Washington, DC 20007 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–41, adopted March 1, 2000, and released March 10, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Additionally, Channel 289C2 can be allotted to Raymond with a site restriction of 27 kilometers (16.8 miles) north at petitioner's requested site; and Channel 300A can be allotted to South Bend with a site restriction of 3.5 kilometers (2.2 miles) southwest to avoid a short-spacing to licensed sites of Station KNDD(FM), Channel 299C, Seattle, Washington, and Station KHPE(FM), Channel 300C, Albany, Oregon. The coordinates for Channel 289C2 at Raymond are 46–55–53 North Latitude and 123–44–02 West Longitude; and the coordinates for Channel 300A at South Bend are 46–38–19 North Latitude and 123–49–54 West Longitude. Since Oakville, Raymond, and South Bend are located with 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian government has been requested, with concurrence of the Oakville allotment requested as a specially negotiated, short-spaced allotment. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 249C1 at Oakville, Washington, or Channel 289C2 at Raymond, Washington.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7258 Filed 3–23–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–544; MM Docket No. 00–42, RM–9826]

Radio Broadcasting Services; Charleroi and Duquesne, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Keymarket Licenses, LLC, proposing the reallotment of Channel 252A from Charleroi to Duquesne, Pennsylvania, and the modification of Station WOGI–FM's license accordingly. Channel 252A can be reallotted to Duquesne in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.1 kilometers (1.9 miles) east at petitioner's requested site. The coordinates for Channel 252A at Duquesne are 40–21–52 North Latitude and 79–48–49 West Longitude. Since Duquesne is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 252A at Duquesne, Pennsylvania.

DATES: Comments must be filed on or before May 3, 2000, reply comments on or before May 18, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Allan G. Moskowitz, Esq., Kaye, Scholer, Fierman, Hays & Handler, LLP, 901 15th Street, NW., Suite 1100, Washington, DC 20005 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–42, adopted March 1, 2000, and released March 10, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7259 Filed 3–23–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF81

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Public Hearing on Proposed Rule To List the Santa Barbara County Distinct Population of the California Tiger Salamander as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice of a public hearing on the proposed rule to list the Santa Barbara distinct population of the California tiger salamander. In addition, the comment period which originally closed on March 20, 2000, will be reopened. The new comment period and hearing will allow all interested parties to submit oral or written comments on the proposal.

DATES: The comment period for this proposal now closes on May 4, 2000. Any comments received by the closing date will be considered in the final decision on this proposal. The public hearing will be held from 6:00 p.m. until 8:00 p.m. on April 20, 2000, in Santa Maria, California.

ADDRESSES: The public hearing will be held at the Santa Maria Inn, 801 South Broadway, Santa Maria, California. Written comments and materials should be sent to Diane Noda, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT: Carl Benz, at the above Ventura, California address, phone 805–644–1766, facsimile 805–644–3958.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 2000, the Fish and Wildlife Service (Service) published a notice in the **Federal Register** (65 FR 3110) proposing to list the Santa Barbara County distinct vertebrate population segment of the California tiger salamander, *Ambystoma californiense,* as endangered pursuant to the Endangered Species Act (Act) of 1973, as amended (Act). An emergency rule listing the population was published concurrently in the same issue of the **Federal Register**. The Santa Barbara County population segment of the California tiger salamander is endemic to low elevation (typically below 300 meters (1,000 feet)) vernal pools and seasonal ponds and the surrounding grasslands, oak woodlands, and coastal scrub of Santa Barbara County, California; and is imperiled primarily by habitat loss from conversion of natural habitat to intensive agriculture and urban development, habitat fragmentation, and agricultural contaminants.

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to three such requests, the Service will hold a public hearing on the date and at address described in the **DATES** and **ADDRESSES** sections above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to the Service at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to the Service. Legal notices announcing the date, time, and location of the hearing will be published in newspapers concurrently with the **Federal Register** notice.

Comments from the public regarding the accuracy of this proposed rule are sought, especially regarding:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the species listed above;

(2) The location of any additional populations of the species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population sizes of the species; and

(4) Current or planned activities in the subject area and their possible impacts on the species.

Reopening of the comment period will enable the Service to respond to the request for a public hearing on the proposed action. The comment period on this proposal now closes on May 4, 2000. Written comments should be submitted to the Service office listed in the **ADDRESSES** section.

Author: The primary author of this notice is Carl Benz (see **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

Elizabeth H. Stevens,

Acting Manager—California/Nevada Operations Office.

[FR Doc. 00–7169 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 58
Friday, March 24, 2000

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

Agricultural Marketing Service

[Docket No. FV00–930–1NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, Marketing Order No. 930.

DATES: Comments on this notice must be received by May 23, 2000.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S., P.O. Box 96456, Washington, DC 20090–6456; Tel: (202) 205–2829, Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov.

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, D.C., 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, Marketing Order No. 930.

OMB Number: 0581–0177.

Expiration Date of Approval: January 31, 2001.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674) industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the program, which has operated since 1996.

The tart cherry marketing order regulates the handling of tart cherries in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The order authorizes volume controls that provide for a reserve pool in times of heavy cherry supplies. Other major marketing order provisions, not currently in use, include minimum grade and size regulations and authorization for market research and development projects, including paid advertising.

The order, and rules and regulations issued thereunder, authorize the Cherry Industry Administrative Board (Board), the agency responsible for local administration of the order, to require handlers and producers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in carrying out marketing decisions.

The Board has developed forms as a means for persons to file required information with the Board relating to tart cherry inventories, shipments, diversions, and other information needed to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the AMAA. Since this order regulates the canned and frozen form of tart cherries, reporting requirements will be in effect all year. A USDA form is used to allow growers to vote on amendments or continuance of the marketing order. In addition, tart cherry producers and handlers who are nominated by their peers to serve as representatives on the Board must file nomination forms with the Secretary.

Formal rulemaking amendments to the order must be approved in referenda conducted by the Secretary. Also, the Secretary may conduct a continuance referendum to determine industry support for continuation of the order. Handlers are asked to sign an agreement to indicate their willingness to abide by the provisions of the order whenever the order is amended. These forms are included in this request.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the AMAA as expressed in the order, and the rules and regulations issued under the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized employees of the Board. Authorized Board employees and the industry are the primary users of the information, and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .191 hours per response.

Respondents: Tart cherry producers and for-profit businesses handling fresh and processed tart cherries produced in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

Estimated Number of Respondents: 943.

Estimated Number of Responses per Respondent: 4.93

Estimated Total Annual Burden on Respondents: 887.63 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the

proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0177 and the Tart Cherry Marketing Order No. 930, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, D.C. 20090–6456; Fax (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th and Independence Ave., SW., Washington, DC, room 2525–S.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 20, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–7332 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Secretary of Agriculture's Special Cotton Import Quota Announcements Numbers 21 Through 26 and Numbers 1 Through 10

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: Sixteen special import quotas for upland cotton are established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991, and Presidential Proclamation 6948 of October 29, 1996. The quotas are referenced as the Commodity Credit Corporation Special Cotton Import Quota Announcement Numbers 21 through 26 and Special Cotton Import Quota Announcement Numbers 1 through 10 and are set forth in subheadings 9903.52.21 through 9903.52.26 and subheadings 9903.52.01 through 9903.52.10, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: Each of the special quotas is subject to an established date and applies to upland cotton purchased not later than 90 days from the established date and entered into the United States not later than 180 days from the established date. Dates applicable to each individual special import quota are contained in a table following this notice.

FOR FURTHER INFORMATION CONTACT: Scott O. Sanford, Farm Service Agency, United States Department of Agriculture, STOP 0515, 1400 Independence Avenue, SW., Washington, DC 20013–0515 or call (202) 720–3392.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1–3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 3.00 cents per pound. This condition was met for 16 consecutive 10-week periods ending October 28, 1999. Therefore, quotas referenced as Special Cotton Import Quota Announcement Numbers 21 through 26 and Special Cotton Import Quota Announcement Numbers 1 through 10 are established subject to the following dates and quantities.

Each special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to extra long staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on March 17, 2000.

Parks Shackelford,

Acting Executive Vice President, Commodity Credit Corporation.

Secretary of Agriculture's cotton import quota announcement	HTS subheading	News release date	Quota start date	90-day purchase date	180-day import date	Quota amount (kilograms)	3-month consumption base period
Number 21	9903.52.21	7/15/99	7/22/99	10/19/99	1/17/00	42,388,357	March–May 1999.
Number 22	9903.52.22	7/22/99	7/29/99	10/26/99	1/24/00	42,388,357	March–May 1999.
Number 23	9903.52.23	7/29/99	8/05/99	11/02/99	1/31/00	42,645,766	April–June 1999.
Number 24	9903.52.24	8/05/99	8/12/99	11/09/99	2/07/00	42,645,766	April–June 1999.
Number 25	9903.52.25	8/12/99	8/19/99	11/16/99	2/14/00	42,645,766	April–June 1999.
Number 26	9903.52.26	8/19/99	8/26/99	11/23/99	2/21/00	42,645,766	April–June 1999.
Number 1	9903.52.01	8/26/99	9/02/99	11/30/99	2/28/00	42,282,225	May–July 1999.
Number 2	9903.52.02	9/02/99	9/09/99	12/07/99	3/06/00	42,282,225	May–July 1999.
Number 3	9903.52.03	9/09/99	9/16/99	12/14/99	3/13/00	42,282,225	May–July 1999.
Number 4	9903.52.04	9/16/99	9/23/99	12/21/99	3/20/00	42,282,225	May–July 1999.
Number 5	9903.52.05	9/23/99	9/30/99	12/28/99	3/27/00	42,282,225	May–July 1999.
Number 6	9903.52.06	9/30/99	10/07/99	1/04/00	4/03/00	41,677,786	June–August 1999.
Number 7	9903.52.07	10/07/99	10/14/99	1/11/00	4/10/00	41,677,786	June–August 1999.
Number 8	9903.52.08	10/14/99	10/21/99	1/18/00	4/17/00	41,677,786	June–August 1999.
Number 9	9903.52.09	10/21/99	10/28/99	1/25/00	4/24/00	41,677,786	June–August 1999.
Number 10	9903.52.10	10/28/99	11/04/99	2/01/00	5/01/00	40,830,552	July–September 1999.

[FR Doc. 00–7277 Filed 3–23–00; 8:45 am]
BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Public Meetings of Advisory Committee on Beginning Farmers and Ranchers

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of public meetings.

SUMMARY: The Farm Service Agency (FSA) is issuing this notice to advise the public that meetings of the Advisory Committee on Beginning Farmers and Ranchers (Committee) will be held to discuss ways to increase new farming and ranching opportunities for these producers, including the review of proposals and recommendations drafted at previous meetings.

DATES: The public meetings will be held April 11–12, 2000, from 8:30 a.m. to 5 p.m. at the Westin Crown Center Hotel, 1 Pershing Road, Kansas City, Missouri (telephone (816) 474–4400). All times noted are Central Standard Time (CST).

ADDRESSES: Mark Falcone, Designated Federal Official for the Advisory Committee on Beginning Farmers and Ranchers, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 5438-S, STOP 0522, Washington, DC 20250–0522; telephone (202) 720–1632; FAX (202) 690–1117; e-mail mark__falcone@wdc.fsa.usda.gov.

FOR FURTHER INFORMATION CONTACT: Mark Falcone at (202) 720–1632.

SUPPLEMENTARY INFORMATION: Section 5 of the Agricultural Credit Improvement Act of 1992 (Pub. L. 102–554) required the Secretary of Agriculture to establish the Committee for the purpose of advising the Secretary on the following: (1) The development of a program of coordinated financial assistance to qualified beginning farmers and ranchers required by section 309 (i) of the Consolidated Farm and Rural Development Act (Federal and State beginning farmer programs provide joint financing to beginning farmers and ranchers); (2) methods of maximizing the number of new farming and ranching opportunities created through the program; (3) methods of encouraging States to participate in the program; (4) the administration of the program; and (5) other methods of creating new farming or ranching opportunities.

Departmental Regulation 1042–119 dated November 25, 1998, formally established the Committee and designated FSA to provide support. The Committee is comprised of 16 members appointed by the Secretary. Members represent the following groups: (1) FSA; (2) State beginning farmer programs; (3) commercial lenders; (4) private nonprofit organizations with active beginning farmer programs; (5) the Cooperative State Research, Education, and Extension Service; (6) educational institutions with demonstrated experience in training beginning farmers or ranchers; (7) other entities providing lending or technical assistance to qualified beginning farmers or ranchers; and (8) farmers and ranchers. The Committee meets at least once a year and all meetings are open to the public. The duration of the Committee is indefinite.

The initial meetings of the Committee, held August 31–September 2, 1999, provided an opportunity for members to exchange ideas on ways to increase opportunities for beginning farmers and ranchers through Federal-State partnerships and to encourage more State participation. Members discussed various issues and drafted numerous recommendations, six of which the Committee determined were priorities and were submitted to the Secretary in writing. During the April meetings, members will discuss the Secretary's response to the six recommendations and review other draft proposals. Guest speakers from the Iowa State University's Beginning Farmer Center and the National Council of State Agricultural Finance Programs will address relevant issues.

Attendance is open to all interested persons but limited to space available. Anyone wishing to make an oral statement should submit their request in writing (letter, fax, or e-mail) to Mark Falcone at the above address. Statements should be received no later than April 6, 2000. Requests should include the name and affiliation of the individual who will make the presentation and an outline of the issues to be addressed. The floor will be open to oral presentations beginning at 1:00 p.m. CST on April 11, 2000. Comments will be limited to 5 minutes, and presenters will be approved on a first-come, first-served basis.

Persons with disabilities who require special accommodations to attend or participate in the meetings should contact Mark Falcone by April 6, 2000.

Signed in Washington, DC, on March 17, 2000.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 00–7278 Filed 3–23–00; 8:45 am]
BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

East Fork of the Jemez Wild and Scenic River, Santa Fe National Forest, Sandoval County, New Mexico; Boundary Establishment

AGENCY: Forest Service, USDA.

ACTION: Notice of Availability.

SUMMARY: In accordance with 16 U.S.C. 1274, the USDA Forest Service has transmitted the final boundary of the East Fork of the Jemez Wild and Scenic River to the Senate and House of Representatives.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Diane Tafoya, Recreation Staff Officer, Jemez Ranger District, P.O. Box 98, Jemez Springs, NM 87025, 505–829–3535.

SUPPLEMENTARY INFORMATION: The detailed legal description and map of the East Fork of the Jemez Wild and Scenic River boundary are available for public inspection in the following Forest Service offices: USDA Forest Service Auditors Building, 201 14th St. SW at Independence Ave. SW, Washington, DC; USDA–FS Southwestern Regional Office, 517 Gold Ave SW, Albuquerque, NM; USDA–FS Santa Fe National Forest, 1474 Rodeo Rd., Santa Fe, NM; USDA–FS Jemez Ranger Station, Jemez Springs, NM.

The Wild and Scenic Rivers Act, Public Law 90–542, as amended by Public Law 101–306 on June 6, 1990 designated the 11-mile segment of the East Fork of the Jemez River, from the Santa Fe National Forest boundary to its confluence with the Rio San Antonio, to be administered by the Secretary of Agriculture in the following classifications: (a) The 2-mile segment for the Santa Fe National Forest boundary to the second crossing of State Highway 4, near Las Conchas trailhead, as a recreational river; and (b) the 4-mile segment from the second crossing of State Highway 4, near Las Conchas trailhead, to the third crossing of State Highway 4 approximately one and one-quarter miles upstream from Jemez Falls, as a wild river; and (c) the 5-mile segment from the third crossing of State Highway 4, approximately one and one-quarter miles upstream from Jemez Falls, to its confluence with the Rio San Antonio, as a scenic river. The final boundary for the designated segments approximately follows the original corridor boundary of ¼-mile of the ordinary high water mark on each side of the river, with adjustments made in

order to follow legal and locatable landlines.

Dated: March 10, 2000.

James T. Gladen,

Deputy Regional Forester.

[FR Doc. 00–7281 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pecos Wild and Scenic River, Santa Fe National Forest, San Miguel and Mora Counties, New Mexico; Boundary Establishment

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: In accordance with 16 USC 1274, the USDA Forest Service is transmitting the final boundary of the Pecos Wild and Scenic River to the Senate and House of Representatives.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Dan Crittenden, District Ranger, Pecos/Las Vegas Ranger District, P.O. Drawer 429, Pecos, NM 87552–0429, 505–757–6121.

SUPPLEMENTARY INFORMATION: The detailed legal description and map of the Pecos Wild and Scenic River boundary are available for public inspection in the following Forest Service offices: USDA Forest Service Auditors Building, 201 14th St. SW at Independence Ave. SW, Washington, DC; USDA–FS Southwestern Regional Office, 517 Gold Ave SW, Albuquerque, NM; USDA–FS Santa Fe National Forest, 1474 Rodeo Rd., Santa Fe, NM; USDA–FS Pecos Ranger Station, Pecos, NM.

The Wild and Scenic Rivers Act, Public Law 90–542, as amended by Public Law 101–306 on June 6, 1990 designated the 20.5 mile segment of the Pecos River, from its headwaters to the townsite of Tererro, to be administered by the Secretary of Agriculture in the following classifications: (a) The 13.5 mile segment from its headwaters to the Pecos Wilderness boundary, as a wild river; and (b) the 7-mile segment from the Pecos Wilderness boundary to the townsite of Tererro, as a recreational river. The final boundary for the designated segments approximately follows the original corridor boundary of ¼-mile of the ordinary high water mark on each side of the river, with adjustments made in order to follow legal and locatable landlines.

Dated: March 10, 2000.

James T. Gladen,

Deputy Regional Forester.

[FR Doc. 00–7279 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

Smoky Canyon Mine, Panels B and C, BLM Pocatello Field Office and Caribou-Targhee National Forest, Caribou County, ID

AGENCY: Bureau of Land Management, USDI and Forest Service, USDA.

ACTION: Notice of Intent to Prepare a Supplemental Environmental Impact Statement

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Pocatello Field Office and the Department of Agriculture, Forest Service (FS), Caribou-Targhee National Forest, will jointly prepare a Supplemental Environmental Impact Statement (SEIS) to document the analysis and disclose the environmental and human effects of a proposed mine plan for future operations at the existing J.R. Simplot Smoky Canyon Phosphate Mine, Caribou County, Idaho, located approximately 20 miles west of Afton, Wyoming. The proposed mining operations would utilize land administered by the FS, BLM and land that is privately owned. Mining would take place on Federal Phosphate Leases I–012890, I–026843, and I–027801, within the Caribou-Targhee National Forest.

J. R. Simplot Company must obtain federal permits prior to mining under the proposed mine plan. The existing mining and milling operations were authorized by a Record of Decision that was issued in 1982 upon completion of the original Smoky Canyon Phosphate Mine EIS. The conditional permits granted by the BLM and FS at the beginning of the Smoky Canyon mining operations required that subsequent site-specific mine plans for the individual mine panels be submitted to the agencies for their review and that appropriate mitigation measures be developed using further environmental analysis. The environmental effects from the proposed B and C Panels were assessed in the 1982 EIS, however this SEIS will further evaluate the effects of the proposed mine plan in light of additional information on selenium and other potential contaminants collected since 1982. Based on the supplemental environmental analysis, the BLM and FS would make decisions regarding the Panel B and C Mine and Reclamation Plan and additional land use authorizations for the proposed mining activities, potentially including: lease modifications by the BLM and a Special Use Permit by the FS. In addition, a Section 404, Clean Water Act permit may be required by the U.S. Army Corps of Engineers (Corps) for the proposed operations.

Agency Decisions

The BLM Pocatello Field Office Manager, who is the responsible official for the SEIS and on-lease lands, and the Caribou-Targhee National Forest Supervisor, who is the responsible official for Caribou-Targhee National Forest lands not on-lease will make separate decisions related to appropriate land use authorizations regarding this proposal considering: scoping comments and responses, anticipated environmental consequences discussed in the SEIS, and applicable laws, regulations, and policies. These decisions may include approval of a site specific Mine and Reclamation Plan; issuance of phosphate lease modifications by the BLM; and special use permits by the FS. A Section 404, Clean Water Act Permit may also be required by the Corps. They would render a decision related to that permit and how to mitigate the impacts to affected wetlands and Waters of the United States.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received on or before April 24, 2000.

Scoping Procedure

The scoping procedure to be used for this SEIS will involve the following: a broad mailing asking for comments, issues and concerns to interested and potentially affected individuals, groups, Federal, State and local government; news releases or legal notices; and public scoping meetings.

ADDRESSES: Send written comments to Linda Matthews, JBR Environmental Consultants, Inc., 8160 South Highland Drive, Suite A–4, Sandy, Utah 84093, (lmatthews@jbr-env.com).

FOR FURTHER INFORMATION CONTACT: Jeff Cundick, Bureau of Land Management, Pocatello Field Office, 1111 N. 8th Ave., Pocatello, Idaho 83201, phone (208) 478–6354; or Philippe de Hanaut, Caribou-Targhee National Forest, Soda Springs Ranger District, 421 W. Second

South, Soda Springs, Idaho 83276, phone (208) 547–4356.

SUPPLEMENTARY INFORMATION: The proposed mining activities would consist of two open pits, known as Panels B and C, topsoil stockpiles, mine equipment parking areas, access and haul roads, a power line extension, external overburden storage areas, and runoff/sediment control facilities. Mining would include best management practices for control of releases of sediment and dissolved metals. The proposed open pits would be located on either side of Smoky Creek. The creek would be crossed in two locations by road fills. One of these road fills already exists for the mine access road and would be widened to accommodate the 100-foot width of a new haul road. A second, new haul road fill would be constructed across Smoky Creek in a separate location. The existing Forest Service road in Smoky Canyon would cross the proposed haul roads at grade in two locations. The public road would be protected with traffic controls posted on either side. A culvert or retaining wall would be installed in Smoky Creek along the mining area to protect water quality during mining and would be removed along with any road fills not required for continued access road requirements during reclamation activities.

Existing mine, maintenance, administrative, and milling facilities would be used during the mine period. Ore from the new panels would be beneficiated in the existing mill facilities and tailings would be deposited in the existing tailings disposal facilities. Ore concentrate would be transferred to the Don Plant in Pocatello, Idaho via the existing slurry pipeline transportation system. Water usage would continue as in the past with no increase in water consumption for the operations.

Disturbed lands directly resulting from the proposed activities would total 656 acres. The new pits would include 353 acres and the rest of the disturbed acreage would be for roads, overburden disposal areas, and other support facilities. Approximately 605 acres of the proposed disturbance would be reclaimed by backfilling most of the proposed open pit areas, regrading fill slopes, spreading topsoil, planting of appropriate vegetation, and installation and maintenance of runoff and sediment control facilities.

The BLM and FS believe, 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 EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519,553 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F. 2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 60-day comment period for the draft SEIS so that substantive comments and objections are made available to the BLM and FS at a time when it can meaningfully consider them and respond to them in the final SEIS.

Preliminary Issues

Initially identified issues include potential effects on: ground water and surface water quantity and quality, wildlife and their habitats, livestock grazing, wetlands and riparian habitat, socio-economics, and development of best management practices for mine operations.

Possible Alternatives

The SEIS will analyze the Proposed Action and No Action Alternatives. Other alternatives to be considered would include altering portions of the proposed mining facilities or sequence and design parameters to provide mitigation for resources of concern.

Tentative SEIS Project Schedule

The tentative project schedule is as follows:

- Begin Public Comment Period—March, 2000
- Hold Public Scoping Meetings—April, 2000
- Estimated date for Draft SEIS—February, 2001
- Public Comment Period on Draft SEIS—60 days from when the Notice of Availability is published in the **Federal Register**

Public Scoping Meetings

Two public scoping meetings will be held, each an open house type, from 7 pm–9 pm. The open houses will include displays explaining the project and a forum for commenting on the project. The meetings will be held as follows:

- Star Valley High School, Afton, Wyoming
- BLM Field Office, Pocatello, Idaho

Information on the dates for the scoping meetings can be obtained from Linda Matthews, JBR Environmental Consultants, Inc., (801) 943–4144, (lmatthews@jbr-env.com).

Public Input Requested

The BLM and FS are seeking information and written comments from Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. To assist the BLM and FS in identifying and considering issues and concerns related to the proposed action, comments for scoping, and later for the Draft SEIS, should be as specific as possible. Referring to specific pages or chapters of the SEIS or the merits of the alternatives formulated and discussed in the SEIS is most helpful.

Dated: March 15, 2000.

Jeff Steele,

Manager, Pocatello Field Office, Bureau of Land Management.

Harold Klein,

Acting Forest Supervisor, Caribou-Targhee National Forest.

[FR Doc. 00–7110 Filed 2–23–00; 8:45 am]

BILLING CODE 4310–84–P, 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Gold/Boulder/Sullivan; Kootenai National Forest, Lincoln County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA–Forest Service will prepare an Environmental Impact Statement (EIS) for the Gold/Boulder/Sullivan Project to disclose the effects of vegetative management through timber harvest and prescribed fire, and road management including road maintenance, reconstruction, and decommissioning. The Gold/Boulder/Sullivan project area encompasses the Gold Creek, Boulder Creek, and Sullivan Creek drainages approximately 12 miles southwest of Eureka, Montana.

The proposed activities are considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.23). The purpose and need for action is to achieve desirable and sustainable conditions in forest stands, improve big game winter range conditions, improve visual quality, improve water quality, and provide goods and services.

The EIS will tier to the Kootenai National Forest Land Resource

Management Plan, as amended, and the Final Environmental Impact Statement (FEIS), and Record of Decision (ROD) of September 1987, which provides overall guidance for forest management of the area.

DATES: Written comments and suggestions should be received on or before April 24, 2000.

ADDRESSES: The Responsible Official is Bob Castaneda, the Kootenai National Forest Supervisor, 1101 Hwy 2 West, Libby, Montana 59923. Written comments and suggestions concerning the scope of the analysis should be sent to Glen M. McNitt, District Ranger, Rexford Ranger District, 1299 Hwy 93 N, Eureka, MT 59917.

FOR FURTHER INFORMATION CONTACT: Contact Ron Komac, Acting NEPA Coordinator, Rexford Ranger District, Phone: (406) 296–2536.

SUPPLEMENTARY INFORMATION: The project area is approximately 37,000 acres and has a favorable climate and good site conditions for forest vegetation. Proposed activities within the decision area include portions of the following areas: T34–36N; R28–30W.

Average annual precipitation ranges from 14 to 1000 inches. At higher elevations, most precipitation falls as snow. The decision area contains a combination of open-grown ponderosa pine and Douglas-fir in the lower elevations, adjacent to Lake Koocanusa; upland areas contain multistoried western larch/Douglas-fir intermixed with lodgepole pine, as well as uniform lodgepole pine stands.

Wildfire historically played a role in interrupting forest succession and creating much of the vegetative diversity that is apparent on the landscape today. Since the early 1900's, a policy of wildfire suppression has been in place on National Forest lands, interrupting the natural vegetation cycle. Existing stands in the lower elevations have a higher stocking level than occurred naturally and are dominated by Douglas-fir which is susceptible to bark beetles and root disease when stressed. Lodgepole pine in the upper elevations have experienced a high level of mortality due to mountain pine beetles and are not contributing toward a desired condition of forest health. A portion of the Decision Area is highly visible from the Tobacco Valley as well as the Scenic Byway (State Highway 37). A portion of the Mount Henry Inventoried Roadless Area is included within the project area. There are no treatments proposed for this area.

The Kootenai National Forest Land and Resource Management Plan provides overall management objectives in individual delineated management areas (MAs). Most of the proposed timber harvest activities encompass five predominant MAs: 11, 12, 15, 16, 17. Briefly described, MA 11 is managed to maintain or enhance the winter range habitat effectiveness for big game species and produce a programmed yield of timber. MA 12 is managed to maintain or enhance the summer range habitat effectiveness for big game specifies and produce a programmed yield of timer. MA 15 focuses upon timber production using various silvicultural practices while providing for other resource values. MA 16 is managed to produce timber while providing for a pleasing view. MA 17 is managed to maintain or enhance a natural appearing landscape and produce a programmed yield of timber. Minor amounts of timber harvest and/or other proposed activities such as prescribed burning are found in other MAs, including 2 (roadless recreation); 5 (viewing areas); 10 (big game winter range); 13 (old growth), 19 (steep slopes), 21 (research natural area), and 24 (low productivity areas).

Purpose and Need

The primary purpose and need for the project is to: (1) Achieve desirable and sustainable conditions in forest stands by reducing stand densities and species competition, and salvage of mortality due to insects or disease; (2) improve big game winter range conditions through the use of prescribed fire to rejuvenate browse species; (3) improve water quality by reducing road effects through road maintenance and reconstruction, and road decommissioning; (4) improve visual quality through feathering edges to reduce line and form; and (5) respond to the social and economic desires of the surrounding area by providing a range of products from the forested environment, while maintaining a resilient, sustainable forest environment over time.

Proposed Activities

The Forest Service proposes to harvest between 18100 and 35600 CCF (hundred cubic feet), equivalent to between 9.1 and 17.8 MMBF (million board feet) of timber through the application of a variety of harvest methods on approximately 2528 acres of forestland. Silvicultural systems include 826 acres of regeneration harvest, 1423 acres of improvement harvest, 118 acres of salvage, and 161 acres of removal of small diameter material. Some treatments would feather or thin stands adjacent to existing units with abrupt edges to improve the visual setting for outdoor recreation.

Removal of trees would be accomplished by a variety of methods including: helicopter, tractor, and line skidding operations. Temporary roads may be needed to access some units to be harvested with ground-based systems. These temporary roads would be decommissioned after timber sale activities are accomplished.

The proposal also includes approximately 2,528 acres of prescribed in association with commercial timber harvest and approximately 3,316 acres of prescribed burning without commercial timber harvest. Prescribed burning without timber harvest is proposed within management area 13 (designated old growth).

The proposed action would result in four additional openings over 40 acres, ranging from 49 to 83 acres. The size of seven other large openings would be increased, ranging from 55 to 464 acres.

The proposal also includes .1 mile of temporary road construction, 64 miles of reconstruction to meet Best Management Practices requirements and decommissioning of four closed roads to restore natural drainage patterns.

Implementation of this proposal would require opening several miles of road currently restricted to public access. It is expected that public access would be allowed on a portion of these roads while management activities are occurring. Restrictions for motorized access would be restored following the conclusion of the management activities.

The proposed action includes precommercial thinning of sapling-sized trees on 2600 acres within managed plantations and natural stands that have regenerated after wildfire. Precommercial thinning would not occur in lynx habitat.

Forest Plan Amendments

The proposed action includes a project-specific forest plan amendments and a programmatic amendment to meet the goals of the Kootenai National Forest Plan.

A programmatic amendment to allow long-term MA 12 open road density to be managed at 1.1 miles/square mile, which exceeds the facilities standard of 0.75 miles/square mile. The roads currently open access high-use recreation facilities or are important access routes for forest users and have been managed as open roads for several decades. There is a social need to maintain these roads as open to motorized access.

A project specific amendment to allow harvest adjacent to existing

openings in up to 11 big game movement corridors. A Forest Plan amendment would be needed to suspend wildlife and fish standard #7 and timber standard #2 for this area. These standards state that movement corridors and adjacent hiding cover be retained. In this situation, high levels of mountain pine beetle activity have precluded alternative treatments. These opening sizes more closely correlate to natural disturbance patterns. Snags and down woody material would be left to provide wildlife habitat and maintain soil productivity.

MA–21; Research Natural Area Candidates

The proposed activities in the Big Creek Research Natural Area would involve fuel treatment activities prior to conducting an underburn in this low elevation area. The Kootenai Forest Plan scheduled two underburns for this area. Some smaller diameter understory trees would be removed in order for this burning to be successful. Any management proposals would be conducted with the full involvement of Forest Service Research.

Range of Alternatives

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative in which none of the proposed activities will be implemented. Additional alternatives may be considered to achieve the projects purpose and need and to respond to specific resource issues and public concerns.

Preliminary Issues

Tentatively, several preliminary issues of concern have been identified. These issues are briefly described below:

Transportation Systems: The implementation of the proposed action would permanently remove approximately 3 miles of road from the landscape which may affect the public's ability to use traditional routes.

Visual Resources: Implementation of the proposed action may alter the existing scenic resource within the project area. Although the proposed action is designed to improve the visuals of past harvest activities, some members of the public may feel that it will have additional scenic impacts.

Wildlife: The proposed action could potentially reduce existing cavity habitat in snags and reduce suitable hiding cover for wildlife security.

Management activities inside of a Research Natural Area: Typically, commercial thinning is not permitted within RNA's. In this particular case, a commercial thinning is necessary in order to remove fuels prior to underburning. If these fuels are not removed, there is a high likelihood that a stand destroying fire could occur rather than a cool underburn which is characteristic for this site.

Decisions To Be Made

The Kootenai Forest Supervisor will decide the following:

- Whether or not to harvest timber and, if so, identify the selection of, and site specific location of, appropriate timber management practices (silvicultural prescription, logging system, fuels treatment, and reforestation), road construction/reconstruction necessary to provide access and achieve other resource objectives, and appropriate mitigation measures.
- Whether or not water quality improvement projects (including road decommissioning) should be implemented and, if so, to what extent.
- Whether or not wildlife enhancement projects (including prescribed burning) should be implemented and, if so, to what extent.
- Whether road access restrictions or other actions are necessary to meet big game wildlife security needs.
- Whether or not project specific and programmatic Forest Plan amendments for MA 12 and MA 21 are necessary to meet the specific purpose and need of this project, and whether those amendments are significant under NFMA.
- What, if any, specific project monitoring requirements would be needed to assure mitigation measures are implemented and effective.

Public Involvement and Scoping

In January 2000 preliminary efforts were made to involve the public in looking at management opportunities within the Gold/Boulder/Sullivan Planning Area. Comments received prior to this notice will be included in the documentation for the EIS. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed action. This input will be used in preparation of the draft and final EIS. The scoping process will assist in identifying potential issues, identifying major issues to be analyzed in depth, identifying alternatives to the proposed action, identifying potential environmental effects of this project and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).

Estimated Dates for Filing

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 2000. At that time EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The Comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed by September, 2000. In the final EIS the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations

The Forest Service believes, at this early state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objectives that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hotel,* 803, F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the

alternatives discussed. 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.

Responsible Official

As the Forest Supervisor of the Kootenai National Forest, 1101 US Highway 2 West, Libby, MT 59923, I am the Responsible Official, As the Responsible Official I will decide if the proposed project will be implemented. I will document the decision and reasons for the decision in the Record of Decision. I have delegated the responsibility to prepare the EIS to Glen M. McNitt, District Ranger, Rexford Ranger District.

Dated: March 15, 2000.

Bob Castaneda,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 00–7282 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Mill Creek Timber Sales and Related Activities, Rogue River National Forest, Jackson County, OR

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On December 14, 1999, a notice of intent for the Mill Creek Timber Sales and Related Activities was published in the **Federal Register** (64 FR 69691). Further project design, analysis, monitoring of previous actions and scoping have identified changes to the proposed action that will subsequently change the responsible official. Analysis has identified the need to adjust the standards and guidelines for soil in the 1990 Land and Resource Management Plan (Forest Plan) for the Rogue River National Forest. As part of the decision for the Mill Creek Timber Sales and Related Activities, an amendment to the Forest Plan will be made to make the Forest Plan consistent with regional policy, standards and guidelines related to soil quality. An amendment to the Forest Plan is a Forest Supervisor's decision. Therefore the responsible official for this EIS changes from the District Ranger to the Forest Supervisor. In addition, further analysis and scoping have allowed clarification of the preliminary issues and the development of alternatives to the proposed action. The following significant issues have emerged. *Soil:* activities associated with the proposed action (harvesting and activity fuels treatment) may cause direct or indirect impacts to soils by surface erosion, compaction, over-land flow, displacement, puddling, and a loss of site productivity (organic matter, nitrogen, water holding capacity, etc.). Activities in combination with past, other present and reasonably future actions may result in adverse cumulative effects to soils (especially considering existing skid trails per activity area and road density) and known detrimental soil areas. *Water quality:* activities may affect water quality via erosion, sediment production, and in combination with past, other present and reasonably foreseeable future actions may result in adverse cumulative effects. *Vegetation condition and forest health:* activities may affect the current mix of seral stages and the long-term health of forested stands; activities may also affect the current conditions associated with root disease, insect populations (pine and Douglas-fir beetles), blister rust, and Douglas-fir dwarf mistletoe, that is affecting the current and long-term health of forested stands. *Wildlife:* activities may affect big game (deer and elk) wildlife by affected hiding and thermal cover, and forage ratios (winter range); activities may affect big game (deer and elk) wildlife travel corridors and migration routes and road densities. Activities may affect terrestrial wildlife habitat associated with late-successional or old-growth forests; this could affect the degree of forest fragmentation and connectivity. *Human social and economic value:* activities may affect portions of certain (non-inventoried) ''roadless'' areas that are currently unroaded; some people may value them for their late-succesional (or spirtual) character. Activities may affect late seral or old-growth vegetation characteristics; some people believe such conditions should be preserved on public lands. Activities associated with the proposed action or its alternatives may generate various economic benefits/costs or overall present net values, depending on design.

The range of alternatives being considered includes a ''no-action'' alternative; the proposed action; an alternative designed to lessen adverse impacts to current soil conditions; an alternative that lessens the adverse impacts to big game cover, migration routes and connectivity of late successional stand types; and an alternative that would defer action in areas currently exhibiting unentered character, would defer building additional roads for harvest access, and would not commercially harvest large trees.

DATES: Comments concerning the scope of the revised analysis should be received by April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Questions should be directed to Joel King, District Ranger, Prospect Ranger District, at 47201 Highway 62, Prospect, Oregon, 97536, phone 541–560–3400, e-mail *jking/r6pnw__rogueriver@fs.fed.us.*

Dated: March 10, 2000.

Gregory A. Clevenger,

Acting Forest Supervisor.

[FR Doc. 00–7303 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Helicopter Landing Tours on the Juneau Icefield EIS 2000, Tongass National Forest, 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. A previous Notice Of Intent (NOI), published on February 3, identified the analysis and decision period as extending from 2000 to 2004. This is the revised NOI for the same project. The Proposed Action has been modified by changing the analysis and decision period to 2001–2005.

The proposed action is to issue special use permits (2001–2005) 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 dog sled mushing 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

authorized level of 19,039 landings. The Forest Service continues to seek 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 31, 2000. A public meeting was held at the Juneau Ranger District on February 25 from 2:00 p.m. until 8:00 p.m. District staff were available at this open house to explain the project, accept comments, and answer questions. The Forrest Service is also participating with City and Borough of Juneau Tourism Advisory and Planning and Policy Committees who are addressing the noise impacts of flightseeing tours on the community, including the proposed helicopter tours, through a series of public and municipal meetings.

ADDRESSES: Written comments and suggestions concerning the analysis should be sent to Laurie Thorpe, Interdisciplinary Team Leader, Juneau Ranger District Office, 8465 Old Dairy Road, Juneau, Alaska 99801.

FOR FURTHER INFORMATION CONTACT: Laurie Thorpe, Interdisciplinary Team Leader, Juneau Ranger District Office, 8465 Old Dairy Road, Juneau, Alaska 99801, (907) 586–8800, fax number (907) 586–8808. Email may be sent to lthorpe/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.

The District Ranger, Juneau Ranger District, is the official responsible for authorizing the special use permits that have been requested. The decision to be made is whether or not to issue special use permits for helicopter landing tours on the Icefield as requested, and if issued, the authorized locations, levels of use, and the types of activities. The District Ranger will also determine any mitigation measures 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 31, 2000.

The draft environmental impact statement should be available for review by April 30, 2000. The comment period on 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, 553 (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. 1334, 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 meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS and Record of Decision is expected to be released in October, 2000. The Juneau District Ranger, 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: March 9, 2000.

Pete Griffin,

Juneau District Ranger.

[FR Doc. 00–7280 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

Comments Must Be Received on or Before: April 24, 2000.

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: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed 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

Tape, Electronic Data, 7045–01–391–0947, 7045–01–438–7086.
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.

Services

Acquisition & Distribution of AA-Cell Batteries, Tier AD, (6135–00–643–1309), Defense Supply Center—Richmond, Richmond, Virginia.
NPA: Eastern Carolina Vocational Center, Inc, Greenville, North Carolina.

Eyewear Prescription Service at the following locations: Department of Veterans Administration Medical Center Outpatient Clinic, 3510 Augusta Road, Greenville, South Carolina, Department of Veterans Affairs Medical Center, 6439 Garners Ferry Road, Columbia, South Carolina.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

Janitorial/Custodial for the following locations in Pasadena, California: US Court of Appeals, 125 South Grand Avenue, Social Security Administration Building, 104 Mentor Street. NPA: Asian Rehabilitation Services, Inc., Los Angeles, California.

Janitorial/Custodial, Bureau of Reclamation, Farmington Construction Office (FCO), 2200 Bloomfield Highway, Farmington, New Mexico. NPA: RCI, Inc., Albuquerque, New Mexico.

Janitorial/Custodial, U.S. Immigration & Naturalization Service, Institutional Hearing Program, 7405CI Highway 75 South, Huntsville, Texas.
NPA: Tri-County Mental Health Mental Retardation Services, Conroe, Texas.

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities 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 proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List: Liner, Trousers, Cold Weather, 8415–01–180–0376 8415–01–180–0377.

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. 00–7324 Filed 3–23–00; 8:45 am]

BILLING CODE 6353–01–P

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 services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 24, 2000.

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: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 21, and December 18, 1998, October 29, 1999, January 14 and 21, and February 11, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 44833 and 70099, 64 FR 58378, 65 FR 2373, 3416 and 6981) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the 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 services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the 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 services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Base Supply Center, 934th Airlift Wing ARS, Minneapolis, Minnesota.

Base Supply Center, Offutt Air Force Base, Nebraska.

Janitorial/Custodial

U.S. Customs Service, Office of Investigation, East and West Wings, Building 50, JFK Airport, Jamaica, New York.

Library Services, Building 405, Shaw Air Force Base, South Carolina.

Mailroom Operation, U.S. Department of State, Office of Foreign Buildings Operations, 1701 North Fort Myer Drive, Arlington, Virginia.

Operation of Individual Equipment Element Store and HAZMART, McGuire Air Force Base, New Jersey.

Reprographics, (GPO Program #464–S), Department of Energy, Washington, DC.

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.

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. 00–7325 Filed 3–23–00; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Office of the General Counsel; Laws or Regulations Posing Barriers to Electronic Commerce

AGENCY: Department of Commerce.

ACTION: Notice, 30-day re-opening of comment period.

SUMMARY: The Department of Commerce, on behalf of the Subgroup on Legal Barriers to Electronic Commerce (''Legal Barriers Subgroup'') of the U.S. Government Working Group on Electronic Commerce, re-opens for an additional 30 days the response period for our request for public comments and suggestions concerning policies, laws or regulations that need to be adapted in order to eliminate barriers to and promote electronic commerce, electronic services, and electronic transactions. The original notice was published on February 1, 2000, with comments to be provided by March 17, 2000 (65 FR 4801).

DATES: Comments are requested by April 24, 2000.

ADDRESSES: Comments may be submitted via the Web at *http://www.ecommerce.gov/ebarriers/respond.* Alternatively, electronic submissions may be sent as documents attached to E-mail messages addressed to ebarriers@ita.doc.gov. Submissions made as E-mail attachments or submitted on floppy disks should be in WordPerfect, Microsoft Word or ASCII format. Diskettes should be labeled with the name of the party and the name and version of the word processing program used to create the document. Paper submissions may be mailed to the Subgroup on Legal Barriers to Electronic Commerce, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 2815, Washington DC 20230. If possible, paper submissions should include floppy disks in WordPerfect, Microsoft Word or ASCII format. Except for floppy disks with paper submissions, duplicate copies should not be submitted.

FOR FURTHER INFORMATION CONTACT: Kenneth Clark, phone: 202–482–3843; E-mail *kclark@doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce has determined that it is appropriate to re-open the record for comments concerning the above-described request for public comments for an additional 30-day period in order: (1) To officially accommodate the significant number of comments being filed somewhat beyond the original comment deadline; and (2) to allow a reasonable, but limited, time for interested parties to augment their previous comments, or to file original comments, in light of the comments of other parties, which have been routinely posted on our Web site at *http://www.ecommerce.gov/ebarriers/review* as soon as practicable after their receipt. Comments filed after April 24, 2000, will not be considered by the Subgroup. Detailed background information concerning the original request for comments is contained in the above-cited **Federal Register** notice, a copy of which is also posted at *http://www.ecommerce.gov/ebarriers/fedreg1.* A copy of this notice can be found at *http://www.ecommerce.gov/ebarriers/fedreg2.*

Publication:

Comments will be published online at *http://www.ecommerce.gov/ebarriers/review.* Respondents should not submit materials that they do not desire to be made public.

Authority:

Presidential Memorandum, ''Facilitating the Growth of Electronic Commerce,'' dated November 29, 1999.

Dated: March 21, 2000.

Andrew J. Pincus,

General Counsel, Department of Commerce.

[FR Doc. 00–7404 Filed 3–23–00; 8:45 am]

BILLING CODE 3510–BW–U

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Africa; Notice of Open Meeting

AGENCY: International Trade Administration/Deputy Assistant Secretary for Africa, Commerce.

SUMMARY: The Advisory Committee on Africa was established to advise the Secretary of Commerce and the Deputy Secretary of Commerce on commercial policy issues in Sub-Saharan Africa.

TIME AND PLACE: March 30, 2000 from 9 a.m. to 12 noon. The meeting will take place at the Main Department of Commerce Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

AGENDA:

1. Review of recent trends in U.S. trade with Africa.
2. Discuss proposals for a Workshop for African Trade Ministers on the World Trade Organization.
3. Discuss commercial implications of the coup d'etat in Cote d'Ivoire.
4. Discuss actions U.S. firms are taking to combat HIV/AIDS in Africa.
5. Discuss Commercial Law Development Programs in Africa.
6. Review status and prospects for passage of the African Growth and Opportunity Act.

PUBLIC PARTICIPATION: The meeting will be open to public participation. Seating will be available on a first-come first-served basis. Members of the public who plan to attend are requested to advise Ms. Alicia Robinson, Office of Africa, tel: 202–482–5148, fax: 202–482–5198, e-mail: alicia__robinson@ita.doc.gov by March 28, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Alicia Robinson, Office of Africa, Room 2037, U.S. Department of Commerce; tel: 202–482–5148, fax: 202–482–5198, e-mail: alicia robinson@ita.doc.gov.

Dated: March 20, 2000.

Sally Miller,

Director, Office of Africa.

[FR Doc. 00–7273 Filed 3–23–00; 8:45 am]

BILLING CODE 3510–DA–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY: Commodity Futures Trading Commission.

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: 65 FR 11988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Wednesday, March 29, 2000.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has cancelled the meeting on proposed regulation 1.41(z).

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–7409 Filed 3–22–00; 10:28 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Government-Owned Invention Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the general availability of exclusive or partially exclusive licenses under the following pending patent. Any license granted shall comply with 35 U.S.C. 209 and 37

CFR part 404. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) manufacturing and marketing ability; (3) time required to bring technology to market and production rate; (4) royalties; (5) technical capabilities; and (6) small business status.

Serial No. 94/39011 entitled ''A Recombinant Polypeptide For Use in the Manufacture of Vaccines Against Campylobacter-induced Diarrhea and to Reduce Colonization'' by Lee, Guerry, Berg and Trust filed 15 July 1997. This technology represents an effective vaccine and treatment against Campylobacter diarrhea and comprises a recombinant fusion protein of the maltose binding protein (MBP) of E.coli fused to amino acids 5–337 of the FlaA flagellin of Campylobacter coli VC167. This fusion protein has provided evidence of immunogenicity and protective efficacy against challenge by a heterologous strain of Campylobacter jejuni 81–176 in mammals. The technology avoids the technical problem of inducing the autoimmune Guillain Barre Syndrome (GBS), a post-infection polyneuropathy caused by Campylobacter molecular mimicry of human gangliosides. The technology includes a recombinant DNA construct encoding the immunodominant region of flagellin conserved across the Campylobacter species; expression—systems; methods for inducing an immune response through injectable, intranasal, and oral formulations; and a method for reducing Campylobacter intestinal colonization.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice.

ADDRESSES: Navy Medical Research Center (NMRC), 503 Robert Grant Ave, Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: CDR Charles J. Schlagel, Office of Technology Transfer, NMRC, phone (301) 319–7427, fax (301) 319–7432, e-mail schlagelc@nmripo.nmri.nnmc.navy.mil.

Dated: March 10, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–7319 Filed 3–23–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The CNO Executive Panel is to conduct the final briefing of the Navy and Alliance Structures II Short Study to the Chief of Naval Operations. This meeting will consist of discussions relating to national security issues associated with coalition and alliance relationships.

DATES: The meeting will be held on April 17, 2000 from 10:00 a.m. to 11:00 a.m.

ADDRESSES: The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: March 13, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.

[FR Doc. 00–7318 Filed 3–23–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; Ford Motor Company

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant Ford Motor Company, a revocable, non-assignable, partially exclusive license in the field of use of all automotive applications for cars and trucks under 30,000 pounds gross vehicle weight in the United States to practice the Government-owned inventions described in U.S. Patent No. 5,705,863 entitled ''Hight Speed Magnetostrictive Linear Motor.''

DATES: Anyone wishing to object to the granting of this license must file written objections along with supporting evidence, if any, not later than May 23, 2000.

ADDRESSES: Written objections are to be filed with the Carderock Division, Naval Surface Warfare Center, Code 004, 9500 MacArthur Blvd., West Bethesda, Maryland 20817–5700.

FOR FURTHER INFORMATION CONTACT: Mr. Dick Bloomquist, Director Technology Transfer, Carderock Division, Naval Surface Warfare Center, Code 0117, 9500 MacArthur Blvd, West Bethesda, Maryland 20817–5700, telephone (301) 227–4299.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: March 15, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–7283 Filed 3–23–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–00NT40779 entitled ''Hybrid Power Systems.'' The goal of this procurement is to aid the development of systems that will produce affordable, safe, environmentally-friendly electrical power with a goal of eventually being 70+ percent efficient (lower heating value) from fossil fuels. The work will focus on proof-of-concept systems of suppliers' market entry product. The system shall contain any combination of existing or ''near-term'' power industry fuel-to-electricity conversion equipment. One of these components must be a high-temperature fuel cell.

DATES: The solicitation will be available on the DOE/NETL's Internet address at

http://www.netl.doe.gov/business on or about April 24, 2000. The solicitation will allow for requests for explanation and/or interpretation. Solicitations will not be distributed in paper form or diskette. The exact date and time for the submission of proposals will be indicated in the solicitation. However, at least a forty-five (45)-day response time is currently planned.

FOR FURTHER INFORMATION CONTACT: Kelly A. McDonald, MS I07, U.S. Department of Energy, National Energy Technology Laboratory 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880, E-mail Address: kelly.mcdonald@netl.doe.gov, Telephone Number: (304) 285–4113.

SUPPLEMENTARY INFORMATION: The work performed under this action will consist of three phases. The first phase will entail identification and resolution of barrier issues of the proposed hybrid system. This will include concept identification, system definition, economic evaluation, and experimental work to resolve any barrier issues. This information will be used by the DOE for system validation. The second phase will consist of a detailed design and cost study of the proposed system. The third phase will include fabrication and proof-of-concept testing of the proposed system. If a potential offeror believes that there are no barrier issues in their proposed system, and has all of the information that would be required in the first phase, the offeror can petition to DOE to initially start the project in Phase II.

The proposed system must contain a high-temperature fuel cell combined with other power generation modules. Other power generation modules that may be proposed include: Another fuel cell; steam turbine; gas turbine; diesels; other heat engines; etc. This solicitation does not address photovoltaics, wind, or tidal energy systems. The system must be fueled by natural gas. The offerer must be a commercial producer of a major component of the proposed system or must partner with commercial producers of the major components (defined as power producing units such as fuel cells, turbines, etc.). While the goal of this procurement is to produce systems with energy efficiencies greater than 70 percent, it is anticipated that the initial market entry systems investigated under this solicitation, may have efficiencies less than this.

DOE anticipates multiple cooperative agreement awards resulting from this solicitation and no fee or profit will be paid to a recipient or subrecipient under the awards. For agreements spanning more than one maturation stage, continuation decision points will be inserted at the completion of each stage. Additional decision points may be required depending upon the length of any one maturation stage. This particular program is covered by Section 3001 and 3002 of the Energy Policy Act (EPAct), 42 U.S.C. 13542 for financial assistance awards. EPAct 3002 requires a cost-share commitment of at least 20 percent from non-Federal sources for research and development projects and at least 50 percent for demonstration and commercial projects. Depending on the phase and maturation stage of the agreement, cost-share expectations will range from 20 to 50 percent. The particular program is also covered by Section 2306 of EPAct, 42 U.S.C. 13525 for financial assistance awards. The solicitation will contain as part of the application package the applicable EPAct representation form(s) for Foreign-owned companies. Funds are not presently available for this procurement. The Government's obligation under this award is contingent upon the availability of appropriated funds from which payment for award purposes can be made, however, it is anticipated that two to four awards will be made during the first quarter of Fiscal Year 2001, with an average total estimated cost from $5 to $15 million.

Prospective applicants who would like to be notified as soon as the solicitation is available should register at http://www.netl.doe.gov/business. Provide your E-mail address and click on the ''Advanced Electric Power Generation'' technology choice located under the heading ''Fossil Energy.'' Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The solicitation will allow for requests for explanation and/or interpretation.

Issued in Morgantown, WV, on March 10, 2000.

Randolph L. Kesling,

Director, Acquisition and Assistance Division.

[FR Doc. 00–7305 Filed 3–23–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL98–36–000 and ER91–569–009]

Aquila Power Corporation v. Entergy Services, Inc., as Agent for Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States, Inc. and Entergy Services, Inc.; Notice of Issuance of Order

March 20, 2000.

On March 16, 2000, the Commission issued an Order Granting In Part, And Denying In Part, Complaint (Order), in the above-docketed proceedings. The Order found, *Inter alia*, that Entergy violated section 28.2 of the *pro forma* tariff but stated that the more appropriate forum for evaluating whether Entergy still lacks market power is in Docket No. ER91–569–009.

Ordering paragraph (C) of the Order states as follows: Aquila and other interested persons may raise or elaborate on the issue discussed in the body of this order in Docket No. ER91–569–009, by filing comments in that proceeding addressing this issue within thirty (30) days of the date of issuance of this order.

Notice is hereby given that the deadline for complying with ordering paragraph (C) above, is April 17, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7312 Filed 3–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3886–002]

Commonwealth Edison Company and Commonwealth Edison Company of Indiana; Notice of Filing

March 20, 2000.

Take notice that on March 10, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd), tendered for filing amendments to ComEd's Open Access Transmission Tariff (OATT).

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, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 31, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7316 Filed 3–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–125–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

March 20, 2000.

Take notice that on March 15, 2000, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79987, filed a request with the Commission in Docket No. CP00–125–000, pursuant to Sections 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon, by conveyance to GPM Gas Corporation (GPM), seven taps serving Westar Transmission Company (Westar) and the service rendered by means thereof authorized in blanket certificate issued in Docket No. CP82–435–000, all as more fully set forth in the request 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 (call 202–208–2222 for assistance).

El Paso proposes to abandon seven taps known as the Hanslik & Emens Tap, the Anna McCollum Tap, the Paul McCollum Tap, the Howard D. Oliver Tap, the Fred Belt Tap, the Bob J. Spears Tap and the R.T. Bedwell Tap (Delivery Point Facilities). El Paso states that these facilities were required by El Paso to facilitate the sale and delivery of natural gas to Westar for resale to Energas Company, a Division of Atmos Energy Corporation (Energas), a local distribution company. El Paso further states that El Paso owns, operates and maintains the 4½-inch O.D., Fuel Line from Phillips-Seninole Plant to Riley Compressor Station (Line No. 6018), commencing in the Section 328, C.C.S.D. & R.G.N.G.R.R. Co. Block G, extending approximately 8.4 miles to the northeast, and terminating in Section 229, Waxahachie Tap R.R. Co., Block G, all in Gaines County Texas. El Paso reports that El Paso and GPM have agreed to the conveyance of line No. 6018 to GPM contingent upon El Paso's abandonment of the Delivery Point Facilities and the natural gas service they provide. El Paso further reports that by letter agreement dated October 21, 1999, Westar and Energas have consented to abandonment of the Delivery Point Facilities and GPM and Westar will provide natural gas service, pursuant to appropriate State regulatory requirements.

El Paso states that the abandonment would not cause any material change in El Paso's cost of service. El Paso continues the proposed abandonment would not result in or cause any interruption, reduction or termination of the transportation service presently rendered to the customers of the Delivery Point Facilities.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Secretary.

[FR Doc. 00–7317 Filed 3–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–1258–000 and EL00–37–000]

First Electric Cooperative Corporation; Notice of Issuance of Order

March 20, 2000.

First Electric Cooperative Corporation (First Electric) made a rate filing in Docket No. ER00–1258–000 pertaining to arrangements under which it provides facilities to Arkansas Electric Cooperative Corporation to provide wheeling services to Entergy Arkansas and C&L Cooperative. Also, in Docket No. EL00–37–000, First Electric filed a request for certain waivers of the Commission's regulations. In particular, First Electric requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by First Electric. On March 15, 2000, the Commission issued an Order Granting Request for Waivers Of Order Nos. 888 And 889, Addressing Requests for Other Waivers And Accepting Rate Filing (Order), in the above-docketed proceedings.

The Commission's March 15, 2000 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (H):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by First Electric 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.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, First Electric is hereby authorized to issue securities and assume obligations and liabilities as guarantor endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of First Electric, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of First

Electric's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 14, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online rims. htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7313 Filed 3–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–1139–000 and ER00–1140–000, ER00–1141–000, ER00–1147–000, ER00–1171–000 (Not consolidated)]

Gleason Power I, L.L.C., West Fork Land Development Company, L.L.C., Des Plaines Green Land Development, L.L.C., AES Londonderry, LLC and Tiverton Power Associates Limited Partnership; Notice of Issuance of Order

March 20, 2000.

Gleason Power I, L.L.C., West Fork Land Development Company, L.L.C., Des Plaines Green Land Development Company, L.L.C., AES Londonderry, LLC, and Tiverton Power Associates Limited Partnership (hereafter, ''the Applicants'') filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On March 16, 2000, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's March 16, 2000 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants 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.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 17, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. This issuance may also be viewed on the Internet at *http://www.ferc.fed.us/*online/rims.htm (call 202–208–2222 for assistance.)

David P. Boergers,

Secretary.

[FR Doc. 00–7314 Filed 3–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Regional Transmission Organizations; Notice of Meeting

March 20, 2000.

In the matter of: RM99–2–000, ER98–1438–000, EC98–24–000, ER99–3144–000, EC99–80–000, EL00–25–000, ER00–448–000, ER99–3318–000, EL00–39–000, EC00–27–000, EC00–28–000, EC00–26–000, EL00–43–000, EL00–46–000, ER99–2779–000, TX00–2–000, ER98–4410–000, ER99–1659–000, ER99–1660–000, ER99–3914–000, ER99–3916–000, EC99–101–000, ER99–1610–000, ER99–993–000, ER98–2910–000, EL98–74–000, ER98–3709–000, ER95–112–000, ER96–586–000, ER95–1001–000, EL95–17–000, ER95–1615–000, ER96–2709–000, TX97–7–000, ER00–1526–000, ER00–1381–000, ER00–1695–000, ER00–1743–000, ER00–536–000, ER00–1820–000, EC98–40–000, ER98–2770–000, ER98–2786–000, and EL99–57–000; Midwest Independent Transmission System Operator, Inc., The Cincinnati Gas & Electric Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Illinois Power Company, PSI Energy, Inc., Wisconsin Electric Power Company, Union Electric Company, Central Illinois Public Service Company, Louisville Gas & Electric Company, Kentucky Utilities Company, Alliance Companies; American Electric Power Service Corporation, Consumers Energy Company, Detroit Edison Company, FirstEnergy Corporation, Virginia Electric and Power Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., IES Utilities Inc., Interstate Power Company, MidAmerican Energy Company, Midwest Independent Transmission, System Operator, Inc., Mid-Continent Area Power Pool, Southwest Power Pool, Inc., UtiliCorp United Inc. and St. Joseph Light & Power Company, UtiliCorp United Inc. and The Empire District Electric Company, Commonwealth Edison Company and PECO Energy Company, UtiliCorp United Inc. v. City of Harrisonville, Missouri, Entergy Power Marketing Corporation v. Southwest Power Pool, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, Prairieland Energy, Inc., Entergy Services, Inc., Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, Northern States Power Company, *et al.* (Minnesota); Cheyenne Light, Fuel and Power Company, *et al.,* Northern States Power Company, *et al.* (Minnesota), New Century Services, Inc., Mid-Continent Area Power Pool, Entergy Services, Inc., Mid-Continent Area Power Pool, Entergy Services, Inc., Entergy Services, Inc. and Entergy Power, Inc., Entergy Power Marketing Corp., Entergy Services, Inc., Missouri Basin Municipal Power Agency, Reliant Energy Services, Inc., Ameren Services Company, Union Electric Company, d/b/a AmerenUE, Entergy Services, Inc., Southwestern Public Service Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, American Electric Power Company and Central and South West Corporation and Entergy Services, Inc.

On December 20, 1999, the Commission issued Order No. 2000 to advance the formation of Regional Transmission Organizations (RTOs). Order No. 2000 announced the initiation of a regional collaborative process to aid in the formation of RTOs. To initiate the collaborative process, the Commission organized a series of regional workshops. These workshops are open to all interested parties. The fourth workshop is scheduled for March 29–30, 2000 in Kansas City, Missouri.

During the course of the Kansas City workshop, discussion of the above-listed cases could arise. Any person having an interest in an above-listed case is invited to attend the Kansas City workshop. There will be no Commission transcript of any of the workshops, and information discussion or disseminated in the workshop will not constitute part of the decisional record in the above-listed cases, unless formally, filed in accordance with Commission Regulations.

David P. Boergers,

Secretary.

[FR Doc. 00–7315 Filed 3–23–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6252–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 6, 2000 Through March 10, 2000 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 9, 1999 (63 FR 17856).

Draft EISs

ERP No. D–AFS–L65342–00 Rating EC2, Pacific Northwest Region Douglas-fir Tussock Moth (orgvia pseudotsugata) Project, To Partially Control an Anticipated Outbreak of Douglas-fir tussock moth, To be Implemented in Nine National Forests in WA and OH.

Summary

EPA expressed concerns about the EIS lacking a clear demonstration that defoliation by tussock moths would adversely affect the environment. EPA also urged that the EIS apply the protocol for addressing 303(d) waters, discuss further the IPM approach used, and describe the indicators that would trigger spraying.

ERP No. D–COE–G36151–TX Rating EC2, Programmatic EIS—Upper Trinity River Basin Feasibility Study, To Provide Flood Damage Reduction, Environmental Restoration, Water Quality Improvement and Recreational Enhancement, Trinity River, Dallas-Fort Worth Metroplex, Dallas, Denton and Tarrant Counties, TX.

Summary

EPA has environmental concerns about water quality. EPA requested additional information regarding optimum channel and lake morphology to ensure safe and recreational use compatible with water quality within the lakes. EPA also requested additional information regarding the Dallas Master Plan's compatibility with Floodplain Management requirements established by Executive Order 11988.

ERP No. D–NRS–A36450–00 Rating EC2, Programmatic EIS—Emergency Watershed Protection Program, Improvements and Expansion, To Preserve Life and Property Threatened by Disaster-Caused Erosion and Flooding, US 50 States and Territories except Coastal Area.

Summary

EPA expressed concern that the ''Prioritized Watershed Planning and Management'' alternative was not selected as the proposed action. EPA requested several modifications to the proposed program, including requirements for cumulative impact assessment and greater use of bioengineering principles when designing projects.

Final EISs

ERP No. F–AFS–J65314–MT, Flathead National Forest, Swan Lake Ranger District, Meadow Smith Project, Vegetative Treatments and Other Activities to Maintain and Restore Large-Tree Old Grow Forest Characteristics, Lake and Missoula Counties, MT.

Summary

EPA continues to express concern about the level of monitoring proposed to identify actual impacts from the implementation activities. EPA also requested additional mitigation measures to reduce other impacts.

ERP No. F–BLM–K67050–NV, South Pipeline Mine Project, Proposal to Extend Gold Mining Operations, Implementation, Lander County, NV.

Summary

EPA continues to express concern regarding air/water quality impacts and the ecological risk of pit lakes. EPA requested that BLM address these issues before the Record of Decision is signed.

ERP No. F–COE–C32035–00, New York and New Jersey Harbor Navigation Study, Identify, Screen and Select Navigation Channel Improvements, NY and NJ.

Summary

EPA's previous issues concerning the lack of a signed Memorandum of Understanding for the Comprehensive Port Improvement Plan (CPIP), the cumulative impacts analysis, and the no action alternative have been adequately addressed. EPA requested that air quality analyses be committed to in the Record of Decision for this project and completed prior to project implementation. EPA expressed concerns that until the CPIP is completed, impacts associated with port facility and infrastructure expansions will not have been addressed. EPA commented that a supplemental EIS for the Harbor Navigation Project may be required at some point in the future.

ERP No. F–DOE–G60007–NM, The Conveyance and Transfer of Certain Land Tracts Administered by the US DOE and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, NM.

Summary

EPA has no objection to the action as proposed.

Dated: March 21, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. 00–7348 Filed 3–23–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–6252–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements

Filed March 13, 2000 Through March 17, 2000

Pursuant to 40 CFR 1506.9.

EIS No. 000078, Final EIS, SFW, ID, MT, Grizzly Bear (Ursus arctos horribilus) Recovery Plan in the Bitterroot Ecosystem, Implementation, Endangered Species Act, Proposed Special Rule 10(j) Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area, Rocky Mountain, Blaine, Camas, Boise, Clearwater, Custer, Elmore, Idaho, Lemhi, Shoshone, Due: April 24, 2000, Contact: Dr. Christopher Servheen (406) 243–4903.

EIS No. 000079, Draft EIS, FHW, VA, Coalfields Expressway Location

Study, Improvements from Route 23 near Pound, VA to the WV State Line east of Slate, VA, Funding and COE Section 404 Permit, Wise, Dickerson and Buchanan, VA, Due: May 12, 2000, Contact: Roberto Forseca-Martinez (804) 775–3320.

Amended Notices

EIS No. 000001, Draft EIS, SFW, WA, Tacoma Water Green River Water Supply Operations and Watershed Protection Habitat Conservation Plan, Implementation, Issuance of a Multiple Species Permit for Incidental Take, King County, WA, Due: March 31, 2000, Contact: Tim Romanski (360) 753–5823. Published FR on 1–14–2000: CEQ Comment Date has been extended from 03/14/2000 to 03/31/2000.

EIS No. 000062, Final EIS, OSM, TN, Fall Creek Falls Petition Evaluation Document, Implementation, Designate the Land as Unsuitable for Surface Coal Mining Operation, Van Buren and Bledsoe Counties, TN , Due: May 03, 2000, Contact: Sam K. Bae (202) 208–2633. Published FR on 3–03–2000: CEQ Comment Date has been extended from 04/03/2000 to 05/03/2000.

EIS No. 000074, Draft EIS, AFS, CO, Upper Blue Stewardship Project, Implementation of Vegetation Management, Travel Management, Designation of Dispersed Camping Sites, White River National Forest, Dillon Ranger District, Summit County, CO, Due: May 01, 2000, Contact: Kathleen Phelps (970) 468–5400. Published FR–3–17–00—Correction to Comment Period from 5–12–2000 to 5–1–2000 and Correction to Title.

Dated: March 21, 2000.

B. Katherine Biggs,

Associate Director, Office of Federal Activities.

[FR Doc. 00–7349 Filed 3–23–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6563–6]

Proposed Past Cost Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as Amended by the Superfund Amendments and Reauthorization Act—Golden, CO

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the requirements in section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), notice is hereby given of a proposed past cost settlement under section 122(h), concerning the Colorado School of Mines Research Institute site in Golden, Colorado (Site). The proposed Administrative Order on Consent (AOC) requires several Potentially Responsible Parties (PRPs), including Federal PRPs to pay an aggregate total of $871,000 to the United States Environmental Protection Agency (EPA) related to response actions taken at the Site.

DATES: Comments must be submitted by April 24, 2000.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, North Tower, Denver, Colorado. Comments should be addressed to Kelcey Land, Enforcement Specialist, (8ENF–T), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405, and should reference the Colorado School of Mines Research Institute Past Cost Settlement (EPA Docket No. CERCLA–8–2000–7).

FOR FURTHER INFORMATION CONTACT: Kelcey Land, Enforcement Specialist, at (303) 312–6393.

SUPPLEMENTARY INFORMATION: Notice of section 122(h) past cost settlement: In accordance with section 122(i)(1) of CERCLA, notice is hereby given that the terms of an Administrative Order on Consent (AOC) has been agreed to by the following parties:

The PRPs include: ASARCO Inc., BP America, Inc., Cotter Corporation, Cyprus Amax Minerals Company, El Paso Natural Gas Company, Elf Aquitane, Inc. on behalf of several Texasgulf companies, ExxonMobil Coal and Minerals Company, N.L. Industries, Inc., Inspiration Consolidated Copper Company, Phelps Dodge Corporation, Terra Industries, Inc., and Western Nuclear, Inc. as well as several affiliates of these companies, all of whom are listed in Attachment A of the agreement. The private PRPs paid a total of $480,993.48.

Several federal PRPs were also identified at the site, however only the Bureau of Mines is a signatory to the agreement. The United States paid a total of $390,006.52 in settlement of the claims against all federal entities.

By the terms of the proposed AOC, these parties will together pay $871,000 to the Hazardous Substance Superfund. This payment along with the $1.056 million reimbursement via the de minimis settlements constitutes approximately a 93% settlement of all EPA's costs at the site.

In exchange for payment, EPA will provide the settling parties with a limited covenant not to sue for liability under section 107(a) of CERCLA, which includes liability for EPA's past costs and contribution protection for EPA's past costs and other past costs incurred before and including May 31, 1997. The covenants and contribution protection also extends to Colorado School of Mines (CSM), Colorado School of Mines Research Institute (CSMRI), and the State of Colorado who are also signatories to the agreement. The only other past costs known at this time were incurred by the signatories to the agreement.

For a period of thirty (30) days from the date of this publication, the public may submit comments to EPA relating to this proposed past cost settlement.

A copy of the proposed AOC may be obtained from Kelcey Land (8ENF–T), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 5000, Colorado 80202–2405, (303) 312–6393. Additional background information relating to the proposed cost settlement is available for review at the Superfund Records Center at the above address.

It is So Agreed.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 00–7328 Filed 3–23–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6564–4]

Announcement of Schedule for Resource Conservation & Recovery Act (RCRA) Corrective Action Guidance Documents and Request for Feedback on RCRA Cleanup Reforms

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice .

SUMMARY: The intent of this notice is to announce a schedule and invite comment on three upcoming RCRA Cleanup Reforms draft guidance documents and invite additional feedback on the Resource Conservation & Recovery Act (RCRA) Cleanup Reforms announced on July 8, 1999. By inviting additional feedback and giving advanced notice of when we expect these draft guidance documents to be

available for review and comment, we hope to encourage greater involvement by states, industry, and the public.

ADDRESSES: There will be a 60-day public comment period for each of three RCRA Corrective Action draft guidance documents. Brief descriptions of each of these draft guidance documents are included under Supplemental Information later in this Notice. The first draft guidance document that will be available is called the Handbook of Groundwater Policies for RCRA Corrective Action. The Agency expects it will be available for public review and comment in April 2000. If you would like to receive a copy, please call the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired).

Brief **Federal Register** Notices will announce the other two draft guidance documents when they become available later this spring. The Agency also intends to post these documents on the Corrective Action website http://www.epa.gov/correctiveaction.

If you wish to comment on the above draft guidance documents when they become available or provide feedback on the RCRA Cleanup Reforms in general, you should send an original and two copies of your comments, referencing docket number F–2000–CURA–FFFFF. If using regular US Postal Service mail to: RCRA Docket Information Center, U.S. Environmental Protection Agency Headquarters (EPA HQ), Office of Solid Waste, Ariel Rios Building (5305G), 1200 Pennsylvania Avenue NW, Washington, DC 20460–0002. If using special delivery such as overnight express service send to: RCRA Docket Information Center (RIC), Crystal Gateway I, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Hand deliveries of comments should be made to the Arlington, VA, address above. You may also submit comments electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format must also reference the docket number F–2000–CURA–FFFFF. If you choose to submit your comments electronically, you should submit them as an ASCII file and should avoid the use of special characters and any form of encryption.

You should not submit electronically confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste, U.S. EPA, Ariel Rios Building (5305W), 1200 Pennsylvania Avenue NW, Washington, DC 20460–0002.

Any public feedback we receive and supporting materials will be available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling 703–603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section of this **Federal Register** notice for information on accessing the index and these supporting materials.

FOR FURTHER INFORMATION CONTACT: For general information or to obtain copies of the draft guidance documents when they become available and RCRA Cleanup Reforms information, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of the draft guidance documents, contact Andrew Baca, Office of Solid Waste, 5303W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (703–308–6787), (baca.andrew@epa.gov). For more detailed information on the RCRA Cleanup Reforms, contact Kevin Donovan, Office of Solid Waste, 5303W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (703–308–8761), (donovan.kevin-e@epa.gov).

SUPPLEMENTARY INFORMATION: The draft guidance documents will be available on the Internet at: http://www.epa.gov/correctiveaction.

Information on the RCRA Cleanup Reforms (RCRA Cleanup Reforms Fact Sheet, RCRA Cleanup Baseline, Environmental Indicator Guidance, and additional Corrective Action Information) is available electronically at: http://www.epa.gov/epaoswer/osw/cleanup.htm.

The official record for this notice will be kept in paper form. Accordingly, we will transfer all feedback and input received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RCRA Information Center.

All input will be thoroughly and seriously considered by EPA. Based on stakeholder input and our ongoing assessment of the program, we will continue to refine the RCRA Cleanup Reforms, add reforms as needed, and communicate program changes including those resulting from stakeholder input. We will provide periodic updates on the RCRA Cleanup Reforms and solicit input from stakeholders through several means including focus meetings, **Federal Register** Notices, the RCRA Corrective Action Newsletter (RCRA CAN), Internet postings, and press releases. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

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

I. What are the RCRA Cleanup Reforms?
II. What guidance documents are discussed in this notice?
  A. Results-Based Approaches to Corrective Action
  B. Corrective Action Completion Guidance
  C. Handbook of Groundwater Policies for RCRA Corrective Action
III. Why are these guidance documents significant?
IV. What is the proposed schedule?
  A. Guidance Document review
  B. Feedback on RCRA Reforms
V. How Can I Influence EPA's Thinking on the RCRA Corrective Action Program?

I. What Are the RCRA Cleanup Reforms?

On July 8, 1999 EPA announced that it is implementing a set of administrative reforms, known as the RCRA Cleanup Reforms, to the Resource Conservation and Recovery Act (RCRA) Corrective Action Program. The reforms are designed to achieve faster, more efficient cleanups at RCRA sites that have actual or potential contamination. The Reform areas are:

—Provide new results-oriented guidance with clear objectives,
—Foster maximum use of program flexibility and practical approaches through training, outreach, and new uses of enforcement tools, and
—Enhance community involvement including greater public access to information on cleanup progress.

See the previous section entitled **FOR FURTHER INFORMATION** * * * on how to get additional detail and information on the RCRA Cleanup Reforms.

II. What Guidance Documents Are Discussed in This Notice?

Three draft guidance documents for the RCRA Corrective Action program are discussed below. Please note that the titles of these draft guidances may have changed slightly since the RCRA

Cleanup Reforms announcement on July 8, 1999 as a result of the Agency's current thinking.

A. Results-Based Approaches to Corrective Action

This guidance will take the form of an overview and supporting documents. The ''Overview to Results-Based Approaches to Corrective Action'' defines results-based corrective action and lists some of the approaches recommended to help stakeholders achieve program goals. These approaches include tailored oversight, procedural flexibility, holistic approach, presumptive remedies, performance standards, use of innovative technologies, targeted data collection, and owner/operator initiated corrective action. The first supporting document focuses on implementing tailored oversight. It provides a recommended framework for project managers and owner/operators to develop an oversight plan tailored to site-specific conditions.

B. Corrective Action Completion

This document will guide the Regions and the authorized States through issues that arise at the end of the corrective action process at RCRA treatment, storage, and disposal facilities (TSDF). Formal recognition that corrective action activities are complete provides assurance to the owner or operator that EPA intends no further imposition of RCRA corrective action requirements at the site unless the facility continues to operate as a TSDF and there is a subsequent release. Providing this assurance can help communities return previously used commercial and industrial properties, such as ''brownfields,'' to productive use.

It is important that EPA Regions and the authorized States understand the issues related to corrective action completion. This guidance will provide useful information, and will encourage appropriate and timely action on the part of regulators.

C. Handbook of Groundwater Policies for RCRA Corrective Action

EPA is compiling in a single Handbook most policies concerning groundwater at facilities subject to corrective action under RCRA. This Handbook will help address concerns about time-consuming uncertainties and confusion about EPA's expectations for groundwater protection and clean up. It will help you as regulators and members of the regulated community, as well as the general public, find and understand EPA policies on groundwater use and the protection and clean up of groundwater at RCRA facilities. It will highlight the considerable flexibility in existing policies, particularly to those states that have distinguished the relative value and priority of their groundwater resources. The Handbook will also encourage States to take a lead role in protecting their groundwater resources.

Topic areas that will be discussed in the guidance will include: Groundwater Use Designations, Short-Term Protectiveness Goals, Final Remediation Goals, Cleanup Levels, Point of Compliance, Source Control, Monitored Natural Attenuation, Technical Impracticability, and Completing Remedies.

III. Why Are These Guidance Documents Significant?

The draft guidance documents discussed above are significant because EPA announced on October 7, 1999 (64 FR 54604) that it would not be finalizing the vast majority of the 1990 Proposed Subpart S regulations. EPA withdrew most of the proposed rule because we determined that such regulations are not necessary to carry out the Agency's duties under sections 3004 (u) and (v). Additionally, attempting to promulgate a comprehensive set of RCRA regulations could unnecessarily disrupt the State and Territorial programs already authorized to carry out the Corrective Action Program in lieu of EPA, as well as the additional State programs currently undergoing review for authorization. This decision ended uncertainty related to the Subpart S rulemaking for State regulators and owners and operators of hazardous waste management facilities. The guidance documents discussed in this notice will provide some further direction on performing the cleanup, or ''corrective action,'' of contamination at RCRA facilities.

IV. What Is the Proposed Schedule?

A. Guidance Document Review

We anticipate that all the draft guidance documents will be available for public review and comment in spring 2000. These guidance documents are likely to become available at different times this spring. They will be available for review for a period of sixty (60) days for each draft guidance document. EPA is announcing the upcoming availability of the draft guidance documents for review and comment and information on how to obtain them when they are available and provide input on them to the Agency in this **Federal Register** and also on the following Websites: www.epa.gov/correctiveaction and www.epa.gov/epaoswer/osw/cleanup.

B. Feedback on RCRA Reforms

We continue to seek feedback from all stakeholders on the need for additional reforms to the RCRA Corrective Action program.

V. How Can I Influence EPA's Thinking on the RCRA Corrective Action Program?

In developing these upcoming draft guidances and the RCRA Cleanup Reforms, we are trying to address the key factors that may be impeding timely and cost-effective cleanups. We invite you to provide different views, or new approaches we haven't considered in trying to improve the pace and effectiveness of Corrective Action Cleanups. We welcome your views on the draft guidances and any aspect of the Reforms. Your feedback will be most effective if you follow the suggestions below:

—Explain your views as clearly as possible and why you feel that way,

—Provide solid technical and cost data to support your views,

—Tell us which parts you support, as well as those you disagree with,

—Provide solid technical and cost data to support your views,

—Tell us which parts you support, as well as those you disagree with,

—Provide specific examples to illustrate your point,

—Offer specific Reforms,

—Refer your comments to specific sections of the Reforms material, and

—Be sure to include the name, date, and docket number with your comments.

EPA continues to seek feedback from all stakeholders on the need for additional reforms to the RCRA Corrective Action Program. Based on stakeholder input and our ongoing assessment of the program, we will continue to refine the RCRA Cleanup Reforms, add reforms as needed, and communicate program changes including those resulting from stakeholder input. EPA may need to seek clarification of electronic or written feedback, or feedback received over the telephone.

Dated: March 17, 2000.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 00–7326 Filed 3–23–00; 8:45 am]

BILLING CODE 6560–50–U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Commission announces that it intends to submit to the Office of Management and Budget (OMB) a request for an extension of the expiration date without change to the existing collection requirements under 29 CFR 1625.22, Waivers of rights and claims under the ADEA. The Commission is seeking public comments on the proposed extension.

DATES: Written comments on this notice must be submitted on or before May 23, 2000.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW, Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number for the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4078 (voice) or (202) 663–4074 (TDD). (These are not toll-free telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW, Washington, DC 20507 between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Joseph N. Cleary, Assistant Legal Counsel, Office of Legal Counsel, at (202) 663–4647 or TTY (202) 663–7026. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission (EEOC) enforces the ADEA of 1967, as amended, 29 U.S.C. 621 *et seq.*, which prohibits discrimination against employees and applicants for employment who are age 40 or older. Congress amended the ADEA by enacting the Older Workers Benefit Protection Act of 1990 (OWBPA), Pub. L. No. 101–433, 104 Stat. 983 (1990), to clarify the prohibitions against discrimination on the basis of age. In Title II of OWBPA, Congress addressed waivers of rights and claims under the ADEA, amending section 7 of the ADEA by adding a new subsection (f), 29 U.S.C. 626(f). The provisions of Title II of OWBPA do require employers to provide certain information to employees (but not to EEOC) in writing. The regulation at 29 CFR 1625.22 reiterates those requirements.

The EEOC seeks extension without change of the information collection requirements contained in this recordkeeping regulation.

Collection Title: Informational requirements under Title II of the Older Workers Benefit Protection Act of 1990 (OWBPA), 29 CFR Part 1625.

Form Number: None. Frequency of Report: None required.

OMB Control No. 3046–0042.

Type of Respondent: Business, state or local governments, not for profit institutions.

Description of the Affected Public: Any employer with 20 or more employees that seeks waiver agreements in connection with exit incentive or other employment termination programs (hereinafter, ''Programs'').

Responses: 13,713.

Reporting Hours: 41,139.

Number of Forms: None.

Abstract: This requirement does not involve record keeping. It consists of providing adequate information in waiver agreements offered to a group or class of persons in connection with a Program, to satisfy the requirements of the OWBPA.

Burden Statement: There is no reporting requirement nor additional record keeping associated with this rule. The only paperwork burden involved is the inclusion of the relevant data in waiver agreements. The rule applies only to those employers who have 20 or more employees and who offer waivers to a group or class of employees in connection with a Program.

Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 5, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission'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 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.

Dated: March 17, 2000.

For the Commission.

Ida L. Castro,

Chairwoman.

[FR Doc. 00–7265 Filed 3–23–00; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2395]

Petitions for Reconsideration of Action in Rulemaking Proceedings

March 16, 2000.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by April 10, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in The 800 MHz Frequency Band (PR Docket No. 93–144, RM–8117, RM–8030, RM–8029).

Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services (GN Docket No. 93–252).

Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–7302 Filed 3–23–00; 8:45 am]

BILLING CODE 6712–01–M

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 2:00 pm on Friday, March 24, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B), of Title 5, United States Code, to consider matters relating to the Corporation's supervisory, corporate, and personnel activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW, Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: March 21, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–7394 Filed 3–21–00; 4:48 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1320–DR]

Kentucky; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky, (FEMA–1320–DR), dated February 28, 2000, and related determinations.

EFFECTIVE DATE: March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 28, 2000:

Bourbon, Johnson, Lawrence, Oldham, and Pendleton Counties for Public Assistance

Carter County for Public Assistance (already designated for Individual Assistance)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–7331 Filed 3–23–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1318–DR]

Virginia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1318–DR), dated February 28, 2000, and related determinations.

EFFECTIVE DATE: March 20, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 28, 2000:

The City of Lynchburg and the City of Norton for debris removal (Category A), emergency protective measures (Category B), and utilities (Category F) under Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–7330 Filed 3–23–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Chief, Financial Reports Section—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829) OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860).

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title*: Interagency Notice of Change in Control, Interagency Notice of Change in Director or Senior Executive Officer, and Interagency Biographical and Financial Report.

Agency form numbers: FR 2081a, FR 2081b, and FR 2081c.

OMB control number: 7100–0134.

Frequency: On occasion.

Reporters: Financial institutions and certain of their officers and shareholders.

Annual reporting hours: Interagency Notice of Change in Control—4,800 hours; Interagency Notice of Change in Director or Senior Executive Officer—150 hours; Interagency Biographical and Financial Report—5,100 hours; Total—10,050 hours.

Estimated average hours per response: Interagency Notice of Change in Control—30 hours; Interagency Notice of Change in Director or Senior Executive Officer—2 hours; Interagency Biographical and Financial Report—4 hours.

Number of respondents: Interagency Notice of Change in Control—160; Interagency Notice of Change in Director or Senior Executive Officer—75; Interagency Biographical and Financial Report—1,275. Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1817(j) and 12 U.S.C. 1831(i)) and is not given confidential treatment.

Abstract: In 1996 a Federal Financial Institutions Examination Council task force adapted, reformatted, and retitled the three reports, pursuant to the Riegle Community Development and Regulatory Improvement Act of 1994. The Federal Reserve uses the biographical portions of the collections to evaluate the competence, experience, character, and integrity of persons proposed as organizers, senior executive officers, directors, or principal shareholders. The financial portion is used to evaluate the financial ability of persons proposed as organizers, senior executive officers, directors, or principal shareholders. The reports are also used to allow or disapprove proposed acquisitions. The reporting forms allow applicants greater efficiency in the interagency application process including eliminating duplicative filings.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Minor Revisions, of the Following Reports

1. *Report title*: The Weekly Report of Eurodollar Liabilities Held by Selected U.S. Addressees at Foreign Offices of U.S. Banks.

Agency form number: FR 2050.

OMB control number: 7100–0068.

Frequency: Weekly.

Reporters: Foreign branches and banking subsidiaries of U.S. depository institutions.

Annual reporting hours: 2,236 burden hours.

Estimated average hours per response: 1.0 hour.

Number of respondents: 43. Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C.§§ 248(a)(2), 353 *et seq.*, 461, 602, and 625). Individual respondents data are confidential under section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The report collects data on Eurodollar deposits payable to nonbank U.S. addressees from foreign branches and subsidiaries of U.S. commercial banks and Edge and agreement corporations. The data are used for the construction of the Eurodollar component of the monetary aggregates and for analysis of banks' liability management practices.

Current Actions: The Federal Reserve will raise the reporting cutoff from a weekly average of $350 million to $500 million in Eurodollar liabilities.

2. *Report title*: The Quarterly Report of Assets and Liabilities of Large Foreign Offices of U.S. Banks.

Agency form number: FR 2502q.

OMB control number: 7100–0079.

Frequency: Quarterly.

Reporters: Large foreign branches and banking subsidiaries of U.S. depository institutions.

Annual reporting hours: 13,132 hours.

Estimated average hours per response: 3.5 hours.

Number of respondents: 938. Small businesses are not affected.

General description of report: This information collection is required (12 U.S.C.§§ 248(a)(2), 353 *et seq.*, 461, 602, and 625) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The report collects gross assets and liability positions from foreign branches and subsidiaries of U.S. commercial banks and Edge and agreement corporations vis-a-vis individual countries. A separate schedule collects information on Eurodollar liabilities payable to certain U.S. addressees.

Current Actions: The Federal Reserve will add the European Central Bank to the country list. In addition, the instructions will be clarified to say that U.S. banks report only for subsidiaries that have a banking charter and are engaged in banking business.

Final Approval Under OMB Delegated Authority to Conduct, Without Revision, the Following Report

1. *Report title*: The Quinquennial Finance Company Questionnaire and Survey.

Agency form number: FR 3033p/s.

OMB control number: 7100–0277.

Frequency: One-time.

Reporters: Domestic finance companies.

Annual reporting hours: Questionnaire, 750 hours; Survey, 840 hours.

Estimated average hours per response: Questionnaire, 0.25 hours; Survey, 1.4 hours.

Number of respondents: Questionnaire, 3000; Survey, 600. Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 263, and 353–359) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: Since 1995 the Federal Reserve has conducted surveys of domestic finance companies every five years on consumer and business credit and on major assets and liabilities of finance companies. The first stage is a simple questionnaire (FR 3033p) which is sent to all domestic finance companies. The questionnaire asks for information on each company's total receivables, areas of specialization, and other characteristics. From the universe of FR 3033p respondents, the Federal Reserve will draw a stratified random sample for the survey itself (FR 3033s). The survey will request detailed information, as of June 30, 2000, from both sides of the respondents' balance sheet.

Final Approval Under OMB Delegated Authority to Conduct Two-One Time Surveys

1. *Report title*: Customer Satisfaction Survey of Federal Reserve Bulletin Subscribers, and Customer Satisfaction Survey of Publication Subscribers.

Agency form number: FR 1371; and FR 1372.

OMB Control number: 7100–0293.

Frequency: One-time.

Reporters: Federal Reserve Bulletin subscribers; and Federal Reserve publications subscribers.

Annual reporting hours: FR 1371, 100; and FR 1372, 100.

Estimated average hours per response: 0.25 hours per survey.

Number of respondents: 400 per survey. Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C 248i). The individual date are not considered confidential.

Abstract: The Customer Satisfaction Survey of *Federal Reserve Bulletin* Subscribers (FR 1371) will solicit comments on the content and usefulness of the Federal Reserve's monthly Bulletin from a sample of subscribers. The staff is focusing on the Bulletin because the Board devotes substantial resources to this publication and will use the information from this survey to determine whether the Board should continue to publish the Bulletin in its current form. The Customer Satisfaction Survey of Publication Subscribers (FR 1372) will solicit comments on the quality of the customer service provided by the Board's Publications Services Department. The information will be used to assess whether the needs of the Board's subscribers are being met in a courteous and expeditious manner and whether changes should be made to the ordering and payment policies and processes in order to increase efficiency and customer satisfaction.

Discontinuation of the Following Report

1. *Report title*: Report of Medium Term Note Issuance.

Agency form number: FR 2600.

OMB control number: 7100–0245.

Effective Date: Friday, March 31, 2000.

Frequency: Monthly, quarterly, or semi-annually.

Reporters: U.S. firms filing SEC shelf registration statements for medium term notes.

Annual reporting hours: 94 burden hours.

Estimated average hours per response: 0.083 hours.

Number of respondents: 424. Small businesses are affected.

General description of report: This information collection is voluntary (15 U.S.C. §§ 225a and 353 et seq). Respondent data are not regarded as confidential.

Abstract: The FR 2600 collects information on the monthly volume of medium-term notes issued by corporations.

Current Actions: The Federal Reserve will discontinue the FR 2600. The report has become unnecessary because data are now obtained from the Depository Trust Corporation, a national clearing house that collects data on medium-term notes issued in the course of its business of clearing and settling securities and acting as trustee for holders of securities.

Board of Governors of the Federal Reserve System, March 20, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–7269 Filed 3–23–00; 8:45 am]

BILLING CODE 6210–01–P

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 (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 April 17, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303–2713:

1. United Community Banks, Inc., Blairsville, Georgia; to merge with North Point Bancshares, Inc., Dawsonville, Georgia, and thereby indirectly acquire Dawson County Bank, Dawsonville, Georgia.

2. United Community Banks, Inc., Blairsville, Georgia; to merge with Independent Bancshares, Inc., Powder Springs, Georgia, and thereby indirectly acquire Independent Bank & Trust Company, Powder Springs, Georgia.

Board of Governors of the Federal Reserve System, March 20, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7271 Filed 3–23–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 7, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Banks, Inc., Creve Coeur, Missouri; to acquire certain assets and assume certain liabilities of First Capital Group, Inc., Albuquerque, New Mexico, and thereby engage in leasing personal and real property activities, pursuant to § 225.28(b)(3) of Regulation Y. The leasing activities will be conducted in a newly formed direct wholly owned subsidiary of Notificant, which will assume the selling institution's name of First Capital Group, Inc. and retain its

head office location in Albuquerque, New Mexico.

Board of Governors of the Federal Reserve System, March 20, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7270 Filed 3–23–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

Agency Holding the Meeting: Board of Governors of the Federal Reserve System.

Time and Date: 10:00 am, Wednesday, March 29, 2000.

Place: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 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 pm 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: March 22, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7428 Filed 3–22–00; 10:59 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Public Workshop; Slotting Allowances and Other Grocery Marketing Practices: When Should They Raise Antitrust Concerns?

AGENCY: Federal Trade Commission.

ACTION: Notice announcing workshop.

SUMMARY: The Federal Trade Commission has set May 31 and June 1 as the dates for its public workshop examining the appropriate antitrust assessment of slotting allowances, category management, and other grocery marketing practices.

DATES: The workshop will be held on May 31 and June 1 in the Commission Meeting Room (Room 432), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR PANEL PARTICIPATION OR FURTHER INFORMATION CONTACT: To obtain information about possible panel participation or for questions about the workshop, please contact: David Balto, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone 202–326–2881, e-mail *dbalto@ftc.gov;* or William Cohen, Office of Policy Planning, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone 202–326–2110, e-mail *wcohen@ftc.gov.*

SUPPLEMENTARY INFORMATION:

Public Workshop: Slotting Allowances and Other Grocery Marketing Practices: When Should They Raise Antitrust Concerns?

Overview

In recent years, debate has continued about when slotting allowances and other grocery marketing practices appropriately raise antitrust concerns and thus pose potential matters for antitrust enforcement. The Commission last held hearings in this area in November, 1995, and this past fall, both the Senate Small Business Committee and the House Judiciary Committee held hearings that addressed several issues, including antitrust issues, in connection with slotting allowances.

The term ''slotting allowance'' typically refers to a lump-sum, up-front payment that a food manufacturer must pay to a supermarket for access to its shelves. Very often, debates over slotting allowances have assumed that all slotting allowances, and all of the market conditions in which they are used, are the same. In fact, the term ''slotting allowance'' has been used to cover an extremely broad range of conduct, some of it clearly unlawful as commercial bribery, some clearly lawful, and a great deal of it in the gray area in between, the antitrust legality of which can be determined only in light of all the surrounding facts and circumstances. At the same time, the legal and economic literature on the appropriate antitrust analysis of these practices has not been as well developed as would be desirable.

The FTC plans to convene a workshop that will focus on the antitrust implications of slotting allowances and other grocery marketing practices, such as category management, in which retailers engage particular manufacturers to provide advisory or decisionmaking functions in determining how best to market certain products of a type produced by those manufacturers. The workshop is intended to facilitate a discussion among manufacturers and retailers (both small and large businesses), consumer groups, marketing experts, economists, and lawyers that will increase factual knowledge and illuminate the relevant antitrust issues with respect to these and other grocery marketing practices. The format will consist of panel presentations and discussions, which will include participation by attendees.

The goal of the workshop is to gain a better understanding of the types of slotting allowances and other grocery marketing practices that are used, the reasons for which they are used, and the criteria for assessing whether slotting allowances or other grocery marketing practices raise antitrust concerns. Interested parties are invited to participate or attend.

Specific Question To Be Addressed

The workshop will address the following questions, among others:

- What are the different types of slotting allowances, and what prompts the use of one type rather than another?
- Are slotting allowances used for both new and established products? In what proportion?
- How do slotting allowances vary from other types of product promotion, and what circumstances lead to the use of slotting allowances rather than other types of product promotion?
- How do slotting allowances vary from market to market?
- What is the impact of slotting allowances on new product development and innovation?
- Do slotting allowances significantly increase the capital costs of entry or doing business in particular markets? If so, how do capital markets respond?
- How do supermarkets ultimately use the fees they receive as slotting allowances?
- Under what circumstances do slotting allowances have an impact on prices to consumers and consumer demand? What is the impact?
- Are slotting allowances sometimes paid in order to obtain substantial exclusivity and, arguably, market power?
- If slotting allowances were prohibited, would that lead to material differences in the bargaining relationship between manufacturers and retailers—or would discounts to retailers simply take a different form?

• What other types of grocery marketing practices—such as category management—may raise antitrust concern? What are those marketing practices, and under what circumstances might they pose antitrust issues?

The Commission welcomes suggestions for other questions that should be addressed as well.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–7268 Filed 3–23–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1450]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

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: Reinstatement without change of a previously approved collection for which approval has expired;

Title of Information Collection: Medicare Uniform Institutional Provider Bill and Supporting Regulations in 42 CFR 424.5;

Form No.: HCFA–1450 (OMB# 0938–0279);

Use: This standardized form is used in the Medicare/Medicaid program to apply for reimbursement for covered services by all providers that accept Medicare/Medicaid assigned claims. It reduces cost and administrative burden associated with claims since only one reimbursement coding system is used and maintained.

Frequency: On occasion;

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government;

Number of Respondents 47,113;

Total Annual Responses: 149,609,549;

Total Annual Hours: 1,960,991.

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: March 14, 2000.

John P. Burke III,

Manager, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–7284 Filed 3–23–00; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–143]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the 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: Extension of a currently approved collection;

Title of Information Collection: Analysis of Malpractice Premium Data;

Form No.: HCFA–R–143 (OMB# 0938–0575);

Use: This form is used for computing the Medicare physician fee schedule Malpractice Geographic Practice Cost Index (MGPCI) and the Medicare Economic Index (MEI). The data collected will be used to update the MGPCI and the new resource-based malpractice relative value units (MRVUs) component of the physician fee schedule. The malpractice data are critical to the accuracy of the Medicare physician fee schedule.;

Frequency: Other: every 3 years;

Affected Public: State, Local or Tribal Gov., Business or other for-profit, and Not-for-profit institutions;

Number of Respondents: 50;

Total Annual Responses: 50;

Total Annual Hours: 150.

To obtain copies of the supporting statement 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 and phone number, 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 designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 8, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–7285 Filed 3–23–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–09]

Notice of Proposed Information Collection; Comment Request; Utility Allowance Adjustments

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: May 23, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, DC 20410, telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Multifamily Housing, Office of Business Products, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone number (202) 708–2866 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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; (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 the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Utility Allowance Adjustments.

OMB Control Number, if applicable: 2502–0352.

Description of the need for the information and proposed use: When approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances for subsidized properties, the project owner must advise the Secretary and request new utility allowances. HUD uses this information to ensure that the utility allowances are appropriate for each unit type at the subsidized properties which provide utility allowances for its residents.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents are 1,200, the frequency of responses is 1 a year, the estimated hours per response is 30 minutes per response, and the estimated annual hour burden is 600.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 17, 2000.

William C. Apgar,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 00–7262 Filed 3–23–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–14]

Notice of Submission of Proposed Information Collection to OMB; Study of the Effectiveness of the Milwaukee Lead Hazard Control Ordinance

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: April 24, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: A Study of the Effectiveness of the Milwaukee Lead Hazard Control Ordinance.

OMB Control Number: 2539–XXXX.

Description of the Need for the Information and Its Proposed Use: This study will assess the effectiveness of a city of Milwaukee ordinance requiring owners pre-1950 rental housing in two neighborhoods with high rates of childhood lead poisoning to conduct specified low cost lead hazard control treatments. Children born into treated units will be followed for 2 years to assess the efficacy of the interventions in preventing overexposure to lead. This information will be useful for determining the primary prevention effectiveness of these interventions and for other municipalities that are contemplating similar legislation. Residents of the two ''treatment'' neighborhoods and two control

neighborhoods will be recruited into the study.

Form Numbers: None.

Respondents: Individuals or households, State, Local or Tribal Government.

Frequency of Submission: Reporting.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
New Collection	312		2		0.68		425

Total Estimated Burden Hours: 425.

Status: New Collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 17, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–7260 Filed 3–23–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–15]

Notice of Submission of Proposed Information Collection to OMB; Multifamily Mortgage Insurance Benefits Claim

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 24, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0415) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Multifamily Mortgagee Insurance Benefits Claims.

OMB Approval Number: 2502–0415.

Form Numbers: HUD–2742, –2744–A, –2744–B, –2744–C, –2744–D, –2744–E.

Description of the Need for the Information and Its Proposed Use: To collect information from mortgagee claimants necessary to provide benefits of mortgage insurance to those mortgagees.

Respondents: Business or Other-for-Profit.

Frequency of Submission: As applications are submitted.

Reporting Burden:

Number of respondents	x	Frequency of responses	x	Hours per response	=	Burden hours
118		1		3.5		411

Total Estimated Burden Hours: 411.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 17, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–7261 Filed 3–23–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Coastal California Gnatcatcher Associated With Residential Development in the City of Fullerton, County of Orange, California

AGENCY: Fish and Wildlife Service, DOI.

ACTION: Notice of availability.

SUMMARY: Van Daele Development Corporation of Riverside, California (Van Daele), has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act, 1973, as amended. Van Daele seeks a permit for a period of 3 years that would authorize incidental take of a bird, the threatened coastal California gnatcatcher (*Polioptila californica californica*), associated with single-family residential development and occupancy of 35 acres of habitat within the City of Fullerton, County of Orange, California. The permit application includes a Habitat Conservation Plan and an Implementation Agreement, both of which are available for public review and comment. We also request

comments on our Environmental Assessment for the proposed issuance of the incidental take permit. We provide this notice pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments on the Environmental Assessment and permit application will become part of the administrative record and will be available to the public.

DATES: Written comments should be received on or before April 24, 2000.

ADDRESSES: You should address written comments to Mr. Ken Berg, Field Supervisor, Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. You also may send comments by facsimile to telephone (760) 431–9624.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Evans, Division Chief, Los Angeles and Orange Counties, at the above address or call (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the documents for review by calling our Carlsbad Fish and Wildlife Office at the above referenced telephone number. You also may make an appointment to review the documents during normal business hours at the above address.

Background

Section 9 of the Endangered Species Act and Service regulations prohibit the ''take'' of threatened or endangered wildlife. Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 USC 1538). Harm may include significant habitat modification that actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering [50 CFR 17.3(c)]. The Service, however, may issue permits to take endangered and/or threatened wildlife incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered and threatened species are found at 50 CFR 17.22 and 17.32.

We propose to issue a permit to Van Daele authorizing take of the threatened coastal California gnatcatcher incidental to otherwise lawful construction, development, and occupancy of a residential subdivision. This project would directly impact the gnatcatcher by removing 4.65 acres of suitable habitat on the 35-acre parcel. The permit application includes a Habitat Conservation Plan and an Implementation Agreement that define the responsibilities of all parties under the Plan. Van Daele's Habitat Conservation Plan describes alternatives to the action and includes measures to minimize and mitigate impacts to the gnatcatcher.

To minimize impacts, Van Daele proposes in its Habitat Conservation Plan to flush coastal California gnatcatchers prior to grading operations and to monitor the site during clearing and grubbing operations (brushing). To mitigate for the permanent loss of occupied habitat due to the proposed subdivision development, Van Daele proposes to permanently protect coastal sage scrub habitat off site that has high long-term conservation value for the coastal California gnatcatcher. Van Daele has agreed with the Service to mitigate for the entire habitat area that supports coastal California gnatcatchers on site, which includes not only the coastal sage scrub but also the grassland ecotone (transition zone between habitat types) and the mulefat scrub on the property, for a combined total of 4.65 acres.

The mitigation plan contains four options that include acquisition or restoration, preservation, and management of high-quality habitat to support coastal California gnatcatchers (in order of priority);

1. Contribute funds to the purchase of lands within the Coal Canyon wildlife corridor.

2. Purchase coastal California gnatcatcher occupied habitat adjacent to, and for incorporation into, Chino Hills State Park.

3. Purchase land within the conditional sale area of the previously approved Shell Oil/Metropolitan Water District Habitat Conservation Plan, for incorporation into the Chino Hills State Park.

4. Restore 4.65 acres of a lemon orchard to coastal sage scrub vegetation within Chino Hills State Park. This lemon orchard is adjacent to occupied coastal California gnatcatcher habitat.

Based on lands valued at $37,000 per acre (as determined from the cost of land in the Shell Oil/Metropolitan Water District conditional sale area), Van Daele proposes to contribute a minimum of $172,050 in fulfillment of this Habitat Conservation Plan. The Service expects that this amount would be adequate to acquire between 3 and 4.65 acres of habitat, or to restore 4.65 ares of habitat. Van Daele reserves the right to propose other possible options at a later date. These options may be selected if they are acceptable to the Service and do not diminish the level or means of mitigation. We anticipate these options to be the acquisition of lands in another established reserve, should one become available prior to the issuance of Van Daele's grading permit and the use of the funds.

In our Environmental Assessment, we considered Van Daele's proposed project (Proposed Action Alternative) and three scenarios under the No Action Alternative. Under the Proposed Action Alternative, we would issue a permit under section 10(a)(1)(B) of the Endangered Species Act to Van Daele, authorizing incidental take of the threatened coastal California gnatcatcher during development and occupancy of the single-family residence tract on the 35-acre proposed project site. The project site was previously used for oil and gas operations. Prior to development, Van Daele would ensure that the site is fully remediated for hazardous wastes that might be present as a result of the approximately 19 wells that have operated at the site. The remediation would be fully compliant with requirements of all applicable State, County, and local agencies and regulations. Three oil wells would remain in operation concurrently with and adjacent to the proposed project.

Implementation of the proposed project would require several discretionary actions by the City of Fullerton including a Specific Plan amendment, zone change, and development agreement. Development of the proposed project would result in the conversion of approximately 35 acres of land from oilfield and gas operations to residential uses. Implementation would also require the marginal extension of Maple Avenue, which currently terminates at Rolling Hills Park, into the western portion of the project site.

Under the no Action Alternative, the Service would not issue an incidental take permit. Van Daele would either proceed with a reduced residential development, select an alternative site, or abandon the project.

Under this no take scenario, Van Daele could proceed with a residential development project within the same 35-acre parcel but with a reduced construction area configuration, so as to avoid physically disturbing the on-site coastal California gnatcatcher habitat. The residential development would be reduced by approximately 5 residences compared to the proposed project.

Under a second no take scenario, Van Daele could select a different site for a residential development project that does not support any listed species. Therefore, the project would not result in the incidental take of a listed species

and issuance of an incidental take permit would not be required.

Under a third no take scenario, Van Daele could abandon the project. The site would remain relatively vacant with the exception of the continued operation of up to 19 oil wells. Under this scenario, there is no assurance that site remediation and abandonment of the approximately 16 wells formerly in use at the site would occur in a timely fashion. Hazardous residuals from prior site use could remain indefinitely in the subsurface soils.

We provide this notice pursuant to section 10(a) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). We will evaluate the permit application, Habitat Conservation Plan, Implementation Agreement, Environmental Assessment, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Endangered Species Act. If we determine that the requirements are met, we will issue a permit for the incidental take of the coastal California gnatcatcher. We will make a decision on permit issuance no sooner than 30 days from the date of this notice.

Dated: March 20, 2000.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California.

[FR Doc. 00–7304 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability, Draft Natural Resource Restoration Plan

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior (DOI), as a natural resource trustee, announces the release for public review of the Draft Natural Resource Restoration Plan (NRRP) for the Saegertown Industrial Area National Priorities List Superfund Site (Saegertown Site). The Draft NRRP describes the DOI's proposal to restore natural resources injured as a result of chemical contamination at the Saegertown Site.

DATES: Written comments must be submitted on or before April 15, 2000.

ADDRESSES: Requests for copies of the Draft NRRP may be made to: Mark Roberts, U.S. Fish and Wildlife Service, Pennsylvania Field Office, 315 South Allen Street, Suite 322, State College, Pennsylvania 16801.

Written comments or materials regarding the Draft NRRP should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Mark Roberts, Environmental Contaminants Branch, U.S. Fish and Wildlife Service, Pennsylvania Field Office, 315 South Allen Street, Suite 322, State College, Pennsylvania 16801. Interested parties may also call (814) 234–4090 or send e-mail to mark__roberts@fws.gov for further information.

SUPPLEMENTARY INFORMATION: Under the authority of the Comprehensive Response, Compensation and Liability Act of 1980, as amended (CERCLA), ''natural resource trustees may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance * * * and may seek to recover those damages.'' Natural resource damage assessments are separate from the cleanup actions undertaken at a hazardous waste site, and provide a process whereby the natural resource trustees can determine the proper compensation to the public for injury to natural resources. At the Saegertown Site in the Borough of Saegertown. Crawford County, Pennsylvania, DOI was the sole natural resource trustee involved in the federal government's settlement with the GATX Corporation (GATX). GATX owns a portion of the site. The U.S. Fish and Wildlife Service determined that contamination on the GATX portion of the site had degraded habitat and injured trust resources (migratory birds). The injuries resulted from the exposure of migratory birds (such as killdeers, red-winged blackbirds, mourning doves, and waterflow) to mercury, lead, and PCB contamination in a 2.3-acre pond/wetland complex on the site.

As part of a Consent Decree requiring remedial actions at the Saegertown site, DOI agreed to a monetary settlement with GATX for natural resource damages. The settlement of $94,510 was designated for restoration, replacement, or acquisition of the equivalent natural resource injured by the release of contaminants at the site, and included reimbursement for costs related to assessing the damages.

The Draft NRRP is being released in accordance with the Natural Resource Damage Assessment Regulations found at Title 43 of the Code of Federal Regulation Part II. The Draft NRRP describes several habitat restoration, acquisition, and protection alternatives identified by the DOI, and evaluates each of the possible alternatives based on all relevant considerations. The DOI's Preferred Alternative is to use the settlement funds to purchase and restore fish and wildlife habitat within the French Creek watershed, in cooperation with several identified partners. The Pennsylvania Game Commission will accept title of the property and manage it for the perpetual protection of fish and wildlife resources. Details regarding the proposed projects are contained in the Draft NRRP.

The Final Revised Procedures for the Service in implementing the National Environmental Policy Act were published in the **Federal Register** on January 16, 1997. That publication provides for a categorical exclusion for natural resource damage assessment restoration plans prepared under CERCLA when only minor or negligible change in the use of the affected areas is planned. The DOI has determined that the Preferred Alternative will result in only a minor change in the use of the affected area. Accordingly this Draft NRRP qualifies for a categorical exclusion under NEPA.

Interested members of the public are invited to review and comment on the Draft NRRP. Copies of the Draft NRRP are available from the U.S. Fish and Wildlife Service's Pennsylvania Field Office at 315 South Allen Street, Suite 322, State College, Pennsylvania 16801. Additionally the Draft NRRP is available for review at the Saegertown Area Library, 320 Broad Street, Saegertown, Pennsylvania 16433. All comments received on the Draft NRRP will be considered and a response provided either through revision of this Draft NRRP and incorporation into the Final Natural Resource Restoration Plan, or by letter to the commentor.

Author: The primary author of this notice is Mark Roberts, U.S. Fish and Wildlife Service, Pennsylvania Field Office, 315 South Allen Street, Suite 322, State College, Pennsylvania 16801.

Authority: The authority for this action is the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C.

Dated: March 10, 2000.

M.A. Parker,

Assistant, Regional Director, Region 5, U.S. Fish and Wildlife Service.

[FR Doc. 00–7286 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–28245]

Public Land Order No. 7433; Partial Revocation of Two Secretarial Orders; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes two Secretarial orders which withdrew National Forest System lands for the Bureau of Reclamation's Colorado-Big Thompson Project. These lands are no longer needed for reclamation purposes. This action will open 922.26 acres to such forms of disposition as may by law be made of National Forest System lands and to mining. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. (1994), it is ordered as follows:

1. The Secretarial Orders dated March 7, 1935, and July 24, 1937, which withdrew National Forest System lands for the Colorado-Big Thompson Reclamation Project, are hereby revoked insofar as they affect following described lands:

Sixth Principal Meridian

Arapaho National Forest

T. 1 N., R. 75 W.,
Sec. 13, lots 5, 6, 11, and 12;
Sec. 14, NE¼NE¼, SW¼NE¼, and SE¼NW¼.
T. 2 N., R. 75 W.,
Sec. 19, lots 1 to 4, inclusive, and E½W½;
Sec. 23, NE¼NE¼;
Sec. 31, N½SW¼NE¼, NE¼NW¼, W½NE¼SW¼, SE¼NE¼SW¼, and SW¼NW¼SE¼;
Sec. 32, lots 3 and 6, SW¼NW¼, NE¼SW¼, and SW¼SE¼.

The areas described aggregate 922.26 acres in Grand County.

2. At 9 a.m. on April 24, 2000, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: March 10, 2000.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 00–7292 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–ET; IDI–15630 et al.]

Public Land Order No. 7437; Modification and Partial Revocation of Executive Orders; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies 5 Executive orders to establish a 20-year term as to 8,040.07 acres of lands withdrawn for the Bureau of Land Management for use as Powersite Reserves. This order also partially revokes 3 of the Executive orders insofar as they affect 3,443 acres and opens 277.30 acres to surface entry. The remaining 3,165.70 acres have been conveyed out of Federal ownership. All of the lands in Federal ownership have been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Jackie Simmons, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3867.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The following Executive orders are hereby modified to expire 20 years from the effective date of this order unless as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawals shall be extended insofar as they affect the following described lands:

Boise Meridian

Executive Order dated November 21, 1916, Powersite Reserve No. 565 (IDI–15630)

T. 9 S., R. 16 E.,
Sec. 15, lot 8;
Sec. 16, lots 7 to 16, inclusive;
Sec. 17, lots 11 to 14, inclusive;
Sec. 21, lot 3;
Sec. 22, lots 5 to 12, inclusive;
Sec. 23, lots 10 to 19, inclusive;
Sec. 24, lots 10 to 15, inclusive;
Sec. 25, lots 4, 5, and 6.
T. 9 S., R. 17 E.,
Sec. 19, lots 8 to 13, inclusive, and SE¼SE¼;
Sec. 20, lots 3 and 4;
Sec. 28, lots 7 to 12, inclusive;
Sec. 29, lots 8 to 12, inclusive;
Sec. 30, lots 8 to 13, inclusive;
Sec. 33, lots 6 and 7 and NE¼NE¼;
Sec. 34, lot 11, and portions of lots 12 to 17, inclusive;
Sec. 35, portions of lots 10 to 13, inclusive, and portion of SE¼NW¼;
Sec. 36, lots 10, 11, 12, 14, and portion of lot 15.
T. 9 S., R. 18 E.,
Sec. 31, lots 4 and 5;
Sec. 32, lot 5 and N½NW¼;
Sec. 33, lots 1 and 2, SE¼SW¼, and SW¼SE¼.
T. 10 S., R. 18 E.,
Sec. 3, lot 9, and SW¼NW¼;
Sec. 4, lots 1, 2, and 4.
T. 10 S., R. 21 E.,
Sec. 29, lots 10, 11, and 12, SW¼NW¼, and W½SE¼NW¼.

Executive Order dated July 2, 1910, Powersite Reserve No. 120 (IDI–15632)

T. 8 S., R. 30 E.,
Sec. 1, lots 4 to 7, inclusive;
Sec. 10, lots 2 to 5, inclusive, and W½SW¼;
Sec. 11, lot 5, and NW¼NW¼;
Sec. 12, lots 2 and 3, and SE¼NW¼;
Sec. 15, lots 5, 6, and 7, and NW¼NW¼;
Sec. 22, lot 4 and SE¼SW¼.

Executive Order dated July 2, 1910, Powersite Reserve No. 91 (IDI–15634)

T. 45 N., R. 3 E.,
Sec. 4, lots 11, 12, 14, and island adjacent thereto;
Sec. 9, lots 1 to 6, inclusive;
Sec. 10, lots 1 to 5, inclusive;
Sec. 11, lots 3 and 4;
Sec. 13, lots 1 to 4, inclusive, lots 9, 11, 12, and 13, S½NW¼, and NW¼SE¼;
Sec. 14, lot 3 and E½NW¼.
T. 45 N., R. 4 E.,
Sec. 11, lots 3 and 4;
Sec. 14, lot 3;
Sec. 17, lots 1 to 10, inclusive, and SW¼NE¼;
Sec. 18, lot 7 and SW¼NE¼.

Executive Order dated July 2, 1910, Powersite Reserve No. 21 (IDI–15636)

T. 7 N., R. 2 E.,
Sec. 10, lots 1 and 2;
Sec. 11, lots 4 and 5;
Sec. 14, lots 1, 2, 4, and NW¼SW¼;

Sec. 15, lots 1 to 5, inclusive;
Sec. 22, NE¼NE¼;
Sec. 23, lot 10;
Sec. 32, lots 3, 4, and 8, and N½SE¼;
Sec. 33, lots 1 and 2.

Executive Order dated December 19, 1910, Powersite Reserve No. 165 (IDI–15650)

T. 2 S., R. 38 E.,
Sec. 7, lots 3, 4, and 5;
Sec. 8, lots 1 and 2;
Sec. 17, lot 1;
Sec. 29, lots 1, 2, and 3;
Sec. 33, lots 4 and 5, and NE¼SE¼.
T. 3 S., R. 38 E.,
Sec. 4, lots 8 to 11, inclusive;
Sec. 9, lot 3;
Sec. 10, lots 5 to 9, inclusive;
Sec. 11, lots 3 to 6, inclusive;
Sec. 13, lots 5 to 9, inclusive;
Sec. 14, lot 3;
Sec. 24, lots 6 and 7.
T. 3 S., R. 39 E.,
Sec. 19, lots 2 and 3, SE¼NW¼, SW¼NE¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 20, SW¼SW¼;
Sec. 29, N½NW¼, SE¼NW¼, and SE¼;
Sec. 32, NE¼ and NE¼SE¼;
Sec. 33, N½SW¼ and SE¼SW¼.
T. 4 S., R. 39 E.,
Sec. 4, W½NE¼, NE¼NW¼, S½NW¼, N½SW¼, and SW¼SW¼;
Sec. 5, S½SE¼;
Sec. 7, S½SE¼;
Sec. 8, N½NE¼, NE¼NW¼, S½NW¼, and N½SW¼;
Sec. 17, SW¼NW¼ and NW¼SW¼;
Sec. 20, SW¼NW¼, N½SW¼, and SE¼SW¼.

The areas described aggregate 8,040.07 acres in Jerome, Twin Falls, Power, Shoshone, Boise, and Bingham Counties.

The lands described above continue to be withdrawn from surface entry, but not mining or mineral leasing, to protect the waterpower values.

2. The Executive Order dated July 2, 1910, which established Powersite Reserve No. 21 (IDI–15636), is hereby revoked insofar as it affects the following described lands:

Boise Meridian

T. 8 N., R. 3 E.,
Sec. 5, lots 7, 8, and 9;
Sec. 8, lots 3, 4, 7, and 8;
Sec. 17, lots 1 and 2;
Sec. 18, lots 5, 6, 7, and 11;
Sec. 19, lots 1 and 2.

The areas described aggregate 277.30 acres in Boise County.

3. The following Executive orders are hereby revoked insofar as they affect the following described lands:

Boise Meridian

Executive Order dated July 2, 1910, Powersite Reserve No. 91 (IDI–15634)

T. 45 N., R. 3 E.,
Sec. 5, lot 10 and NW¼SW¼;
Sec. 10, lot 6;
Sec. 11, lots 1 and 2;
Sec. 13, lots 5 to 8, inclusive, lot 10, and SW¼NE¼.

Executive Order dated July 2, 1910, Powersite Reserve No. 21 (IDI–15636)

T. 7 N., R. 2 E.,
Sec. 30, lots 3, 4, and 5;
Sec. 31, lots 1 and 2, lots 5 to 9, inclusive, and SE¼NW¼.
T. 8 N., R. 2 E.,
Sec. 24, lots 1 to 7, inclusive;
Sec. 25, lots 1, 2, and 3, and NW¼NE¼;
Sec. 26, lots 1 to 5, inclusive.
T. 8 N., R. 3 E.,
Sec. 5, lots 1 and 10;
Sec. 8, lots 2, 5, and 6;
Sec. 17, lots 3 to 6, inclusive;
Sec. 18, lots 9 and 10;
Sec. 19, lots 3, 5, 6, and NW¼NE¼.

Executive Order dated December 19, 1910, Powersite Reserve No. 165 (IDI–15650)

T. 2 S., R. 38 E.,
Sec. 29, lot 4;
Sec. 33, lots 1 and 3.
T. 4 S., R. 39 E.
Sec. 8, SW¼SW¼;
Sec. 18, E½E½;
Sec. 19, E½NE¼.

The areas described aggregate 3,165.70 acres in Shoshone, Boise and Bingham Counties.

4. At 9 a.m. on April 24, 2000, the lands described in Paragraph 2, shall be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on April 24, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. The lands described in Paragragh 3 have been conveyed out of Federal ownership.

Dated: March 10, 2000.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 00–7320 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–ET; MTM 014987 and MTM 41561]

Public Land Order No. 7430; Partial Revocation of Executive Order dated June 1, 1912 and Public Land Order No. 1692; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order and a public land order insofar as they affect 17.15 acres of National Forest System lands withdrawn for the Wise River Ranger Station and the Bureau of Land Management's Phosphate Reserve No. 12—Montana No. 3. The lands are no longer needed for these purposes and the revocation would make 14.90 acres available for exchange. These lands have been and will remain open to mineral leasing. The remaining 2.25 acres have been conveyed out of Federal ownership and this is a record-clearing action only for this portion.

EFFECTIVE DATE: March 24, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–896–5052.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated June 10, 1912, which withdrew National Forest System lands for Phosphate Reserve 12—Montana No. 3, and Public Land Order No. 1692, which withdrew National Forest System lands for the Bureau of Land Management's Phosphate Reserve No. 12—Montana No. 3, are hereby revoked insofar as they affect the following described lands:

Principal Meridian, Montana

Beaverhead National Forest

(a) Federal lands (14.90 acres)

T. 1 S., R. 11 W.,
Sec. 3, lot 10.

(b) Non-Federal lands (2.25 acres)

T. 1 S., R. 11 W.,
Sec. 3, a strip of land lying between Tracts A and B of HES 223.

The areas described in (a) and (b) contain 17.15 acres in Beaverhead County.

2. The lands described in Paragraph 1(a) are hereby made available for exchange in accordance with the General Exchange Act of 1922, 16 U.S.C. 485, 486 (1994).

3. The lands described in Paragraph 1(b) have been conveyed out of Federal ownership and this is a record-clearing action only.

Dated: March 10, 2000.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 00–7289 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–ET; MTM 40729]

Public Land Order No. 7432; Partial Revocation of Secretarial Order Dated August 24, 1903; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 382.32 acres of public lands withdrawn for the Bureau of Reclamation's Lower Yellowstone Project. The lands are no longer needed for reclamation purposes. This action will open 222.32 acres to surface entry, subject to other segregations of record. The remaining 160 acres have been conveyed out of Federal ownership and the revocation on this portion is a record-clearing action only. The lands in Federal ownership have been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–896–5052.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated August 24, 1903, which withdrew public lands for the Bureau of Reclamation's Lower Yellowstone Project, is hereby revoked insofar as it affects the following described lands:

Principal Meridian, Montana

(a) Federal Lands (222.32 Acres)

T. 19 N., R. 57 E.,
Sec. 24, W½W½.
T. 21 N., R. 58 E.,
Sec. 22, lots 4 and 5.

(b) Non-Federal Lands (160 Acres)

T. 19 N., R. 57 E.,
Sec. 24, N½NE¼, SE¼NE¼, and NE¼NW¼.

The areas described in (a) and (b) aggregate 382.32 acres in Richland County.

2. At 9 a.m. on April 24, 2000, the lands referenced in paragraph 1(a) shall be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on April 24, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: March 10, 2000.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 00–7294 Filed 3–23–00; 8: 45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6333–ET; GP0–0161; OR–9651]

Public Land Order No. 6876; Withdrawal of National Forest System Lands for the Ashland Resource Natural Area, the Jackson Campground Extension, and the Kanaka Campground; Oregon; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This action corrects Public Land Order No. 6876, 56 FR 46122, published September 10, 1991, as FR Doc. 91–21627.

On page 46122, third column, paragraph 1, under T. 40 S., R. 3 W., which reads ''Sec. 19, lots 2, 3, 4, and 6.'' is hereby corrected to read ''Sec. 19, lots 1, 2, 3, 4, and 6.''

Kenneth J. St. Mary,

Acting Chief, Branch of Realty and Records Services, Oregon/Washington.

[FR Doc. 00–7288 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6333–ET; GP0–0023; OR–19617(WA), OR–22318 (WA)]

Public Land Order No. 7431; Revocation of Secretarial Orders Dated July 8, 1916 and January 24, 1917; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes, in their entirety, two Secretarial orders as they affect 2,404.11 acres of lands within the Colville Indian Reservation withdrawn for Bureau of Land Management Powersite Reserve Nos. 536 and 568. The lands are no longer needed for the purpose for which they were withdrawn. This action will open the lands to such forms of disposition as may by law be made of Indian Reservation lands.

EFFECTIVE DATE: March 24, 2000.

FOR FURTHER INFORMATION CONTACT: Allison O'Brien, BLM Oregon/Washington State Office, PO Box 2965, Portland, Oregon 97208–2965, 503–952–6171.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders dated July 8, 1916 and January 24, 1917, which established Powersite Reserve No. 536 and Powersite Reserve No. 568 respectively, are hereby revoked in their entirety:

Willamette Meridian

Colville Indian Reservation

T. 29 N., R. 26 E.,
Sec. 4, lots 4 and 5.
T. 30 N., R. 26 E.,
Sec. 26, lots 3 and 4;
Sec. 35, lot 1.
T. 29 N., R. 30 E.,
Sec. 1, lots 4 and 5, and lots 7 to 11, inclusive;
Sec. 2, lots 6 and 7, and NE¼NE¼.
T. 30 N., R. 30 E.,
Sec. 10, lots 5 to 8, inclusive, NW¼NE¼, and NE¼SE¼;
Sec. 14, SW¼NW¼ and W½SW¼;
Sec. 15, lots 5 to 8, inclusive;
Sec. 22, lots 6 to 10, inclusive;
Sec. 23, W½W½;
Sec. 26, lots 1 to 4, inclusive, and SW¼SE¼;
Sec. 27, lot 5;
Sec. 35, lots 3 to 6, inclusive.
T. 31 N., R. 30 E.,
Sec. 31, lots 3 and 6;
Sec. 32, lots 1 to 4, inclusive;
Sec. 33, lots 3 and 4.
T. 28 N., R. 33 E.,
Sec. 10, lot 1, SE¼SW¼, and areas A and B lying in the NW¼SW¼;
Sec. 13, lots 9 to 17, inclusive;
Sec. 14, lots 8 to 15, inclusive, and areas A and B (formerly lot 7);
Sec. 15, lots 5, 6, 8, 9, and 10.
T. 28 N., R. 34 E.,
Sec. 17, lots 7 to 11, inclusive;
Sec. 18, lots 8, 9, 11, 12, and 13.

The areas described aggregate approximately 2,404.11 acres in Ferry and Okanogan Counties.

2. At 8:30 a.m. on March 24, 2000, the lands will be opened to such forms of disposition as may by law be made of Indian Reservation lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: March 10, 2000.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 00–7291 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6333–ET; GP0–0087; OR–54142]

Public Land Order No. 7436; Withdrawal of Public Lands for Coos Bay North Spit Special Recreation Area and Area of Critical Environmental Concern; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 1,712.74 acres of public lands from mining for a period of 20 years for the Bureau of Land Management to protect the Coos Bay North Spit Special Recreation Management Area and Area of Critical Environmental Concern. An additional 150.93 acres of non-Federal lands, if acquired by the United States, would also be withdrawn by this order. The public lands have been and will remain open to surface entry and mineral leasing subject to other segregations of record.

EFFECTIVE DATE: March 24, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Barnes, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights and other segregations of record, the following described public lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch 2 (1994)), but not from surface entry under the general land laws or leasing under the mineral leasing laws, to protect the Coos Bay North Spit Special Recreation Area and Area of Critical Environmental Concern:

Willamette Meridian

T. 25 S., R. 13 W.,
Sec. 4, N½NW¼;
Sec. 5, fractional NW¼NW¼;
Sec. 6, lot 3, lots 5 to 9, inclusive, and SE¼NE¼;
Sec. 7, lots 6 and 8, and lots 10 to 19, inclusive;
Sec. 8, lot 2;
Sec. 18, lots 7 and 8, E½NW¼, fractional W½NW¼, and fractional NW¼SW¼.
T. 25 S., R. 14 W.,
Sec. 12, lot 1;
Sec. 13, lots 1 to 4, inclusive, and E½SE¼;
Sec. 23, lot 1;
Sec. 24, lots 6 to 13, inclusive, W½NE¼, and NE¼SW¼;
Sec. 25, lot 3 and lot 1 including all of the tideland lying east of, fronting, and abutting upon;
Sec. 26, lots 8 to 10, inclusive;

The areas described aggregate approximately 1,712.74 acres in Coos County.

2. The following described non-Federal lands, if acquired by the United States, will be subject to the terms and conditions of this withdrawal as described in paragraph 1:

Willamette Meridian

T. 25 S., R. 13 W.,
Sec. 18, lots 3 and 4, and NE¼SW¼;
Sec. 19, lot 4.
T. 25 S., R. 14 W.,
Sec. 24, lot 4.

Along with any accretion to the above listed lands. The areas described aggregate approximately 150.93 acres in Coos County.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 20 years from the effective date of this order unless as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), the Secretary determines that the withdrawal shall be extended.

Dated: March 10, 2000.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 00–7293 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–ET; WYW 141567]

Public Land Order No. 7434; Withdrawal of Public Land for Whiskey Mountain Bighorn Sheep Winter Range; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 1,430.92 acres of public lands from surface entry and mining for a period of 20 years to protect the Whiskey Mountain Bighorn Sheep Winter Range and capital investments in the area. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: March 24, 2000.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect the Whiskey Mountain Bighorn Sheep Winter Range:

Sixth Principal Meridian

T. 40 N., R.105 W.,
Sec. 17, NE¼NE¼, S½N½, NE¼SW¼, and SE¼;
Sec. 18, NE¼NE¼;
Sec 20, E½NE¼;
Sec. 21, NW¼NW¼, S½NW¼, N½SW¼, and SE¼SW¼.
T. 41 N., R. 106 W.,
Sec. 17, NW¼SW¼, S½SW¼, and S½S½SE¼;
Sec. 18, NE¼NE¼ (excepting patent 906078), W½NE¼, SE¼NW¼, NE¼SW¼, and SE¼;
Sec. 19, lot 1, N½NE¼, and NE¼NW¼.

The areas described aggregate 1,430.92 acres in Fremont County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: March 10, 2000.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 00–7290 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–940–01–5410–10–B119; CACA 41159]

Conveyance of Mineral Interests in California; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This notice corrects the following Notice of Segregation:

(1) Notice of Segregation which was published on February 18, 2000 on page 8440 (65 FR 8440), as FR Doc. 00–3957:

On page 8440, in the second column, under T. 26 S., R. 37 E., which reads ''Sec. 7, N½S½SE¼NW¼, S½S½SE¼NW¼, N½S½SE¼NW¼.'' is hereby corrected to read ''Sec. 7, N½S½ SE¼ NW¼, S½S½SE¼NW¼, N½N½NE¼SW¼.''

David Mcilnay,

Chief, Branch of Lands.

[FR Doc. 00–7287 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Meeting of Concessions Management Advisory Board

AGENCY: National Park Service, DOI.

ACTION: Notice of Meeting of Concessions Management Advisory Board.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), notice is hereby given that the Concessions Management Advisory Board will hold its second meeting April 11 through April 13, 2000, in San Francisco, California. The meeting will convene at 8:30 a.m. on Tuesday, April 11 at the Golden Gate Club located in Building 135, Fisher Loop at the Presidio. The Board will adjourn at approximately 4:00 p.m. on Thursday, April 13.

SUPPLEMENTARY INFORMATION: The Advisory Board was established by Title IV, Section 409 of the National Park Omnibus Management Act of 1998, November 13, 1998 (Pub. L. 105–391). The purpose of the Board is to advise the Secretary and the National Park Service on matters relating to management of concessions in the National Park System.

Topics for discussion during this meeting include:

- Welcome; Objectives of meeting.
- Overview of various business ventures and programs at the Presidio and Golden Gate NRA.
- Review of NPS Rate Approval Procedures.
- Discussion of Department of Defense ''Best Practices'' Review.
- Closing remarks (including summary of accomplishments of meeting, date of next proposed meeting, assignment of tasks).

The Board will also discuss its organizational and administrative needs.

The meeting will be open to the public, however, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least 2 weeks before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date, however, we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it.

Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the Director, National Park Service, attention: Manager, Concession Program Division, at least 7 days prior to the meeting. Further information concerning the meeting may be obtained from National Park Service, Concession Program Division, 1849 C St. NW, Rm. 7313, Washington, DC 20240, telephone 202/565–1210.

Draft minutes of the meeting will be available for public inspection about 8 weeks after the meeting, in room 7313, Main Interior Building, 1849 C Street, NW, Washington, DC.

Dated: March 17, 2000.

Robert Stanton,

Director, National Park Service.

[FR Doc. 00–7272 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Final Petition Evaluation Document/ Environmental Impact Statement on Fall Creek Falls, Tennessee

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of extension.

SUMMARY: On March 3, 2000, the Office of Surface Mining Reclamation and Enforcement (we or OSM) made available a final petition evaluation document/environmental impact statement (PED/EIS) for a petition to designate certain lands in and near Fall Creek Falls State Park and Natural Area as unsuitable for all surface coal mining operations. The land is located in Van Buren and Bledsoe Counties, Tennessee. We prepared the PED/EIS to assist the Secretary of the Interior in making a decision on the petition. Governing regulations at 40 CFR 1506.10(b)(2) require that no decision on the petition be made until 30 days after the PED/EIS is made available to the public. We are extending the prescribed wait period by 30 days.

DATES: The prescribed time period is extended to May 3, 2000; therefore, the decision by the Secretary of the Interior will not be made prior to May 4, 2000.

ADDRESSES: You may obtain a copy of the final PED/EIS by contacting Beverly Brock at the address and telephone number listed under **FOR FURTHER INFORMATION CONTACT.** A copy of the final PED/EIS is available for inspection at that address, and also at the Bledsoe and Van Buren County Clerk's offices.

FOR FURTHER INFORMATION CONTACT: Beverly Brock, Supervisor, Technical Group, Office of Surface Mining, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902. Telephone: (865) 545–4103, ext. 146. E-Mail: bbrock@osmre.gov.

SUPPLEMENTARY INFORMATION: We have been petitioned by Save Our Cumberland Mountains, Tennessee Citizens for Wilderness Planning, and 49 citizens to designate the watershed and viewshed of Fall Creek Falls State Park and Natural Area, Tennessee, as unsuitable for all types of surface coal mining operations.

We prepared the final PED/EIS in accordance with Section 522(d) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA). We have analyzed the

petitioners' proposed action of designating the entire petition area as unsuitable for surface coal mining operations and four alternative actions ranging from denying the petition in whole in designating certain portions of the petition area as unsuitable for mining.

In preparing the final PED/EIS, we revised the draft PED/EIS in response to comments received during the public comment periods. These comments and OSM's responses to them are included in the final PED/EIS.

The PED/EIS was made available on March 3, 2000. See 65 FR 11575 and 65 FR 11604. We have received a request to extend the prescribed wait period by 30 days and by this notice we are extending the wait period through May 3, 2000. No decision will be made by the Secretary of the Interior prior to May 4, 2000. When the decision is made, we will make it available to the public.

Dated: March 15, 2000.

Mary Josie Blanchard,

Assistant Director, Program Support.

[FR Doc. 00–7208 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: United States International Trade Commission.

ACTION: Notice of proposed collection; comment request.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35), the Commission intends to seek approval from the Office of Management and Budget to survey complainants who obtained exclusion orders that are currently in effect from the United States International Trade Commission following proceedings under 19 U.S.C. 1337. The survey will seek feedback on the effectiveness of the exclusion orders in stopping certain imports. Comments concerning the proposed information collection are requested in accordance with 5 CFR 1320.8(d).

DATES: To be assured of consideration, written comments must be received on or before May 23, 2000.

ADDRESSES: Signed comments should be submitted to Donna R. Koehnke, Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed survey that the Commission will submit to the Office of Management and Budget for approval are posted on the Commission's World Wide Web site at http://www.usitc.gov or may be obtained from Lynn I. Levine, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone, 202–205–2560.

SUPPLEMENTARY INFORMATION:

Request for Comments

Comments are solicited as to (1) whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed information collection; (3) the quality, utility, and clarity of the information to be collected; and (4) minimization of the burden of the proposed information collection on those who are to respond.

Summary of the Proposed Information Collection

In its Strategic Plan (available on the agency's World Wide Web site at http://www.usitc.gov) the Commission set itself the goal of obtaining feedback on the effectiveness of its exclusion orders from complainants who obtained such orders under 19 U.S.C. 1337. The survey asks each firm responding to the survey to: (i) Evaluate whether the remedial exclusion order has prevented the importation of items covered by the order, (ii) if not, estimate what are the absolute value and effect in the United States market of such imports and (iii) indicate what experience it has had in policing the exclusion order, particularly with respect to any investigatory efforts and any interactions with the U.S. Customs Service.

Responses to the survey are voluntary. The Commission estimates that the survey will require less than 1 hour to complete.

By order of the Commission.

Dated: March 20, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–7266 Filed 3–23–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Notice is hereby given that a proposed Consent Decree (''Decree'') in *United States* v. *Apex Engineering, et al.,* Civil Action No. 00 2100 GTV, was lodged on February 28, 2000, with the United States District Court for the District of Kansas.

The complaint filed in the above-referenced matter alleges that Defendants Apex Engineering, Inc.; Cargill, Inc.; Continental Tank Car Corporation; Coastal Refining and Marketing, Inc.; The Coleman Company, Inc.; Farmland Industries, Inc.; Safety-Kleen (Wichita), Inc.; Unified School District No. 259; Union Oil Company of California, d/b/a Unocal; and Van Waters & Rogers Inc., are jointly and severally liable for the United States' response costs at the 29th and Mead Superfund Site (''Site'') in Wichita, Kansas, pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

The Site is a 4,000-acre area comprised of various industrial, residential and commercial properties located in north central Wichita, Sedgwick County, Kansas. It has been used primarily for industrial purposes since the late 1880s. EPA discovered volatile organic compound contamination in groundwater beneath the Site in 1983.

Under the proposed Decree, the Defendants in this action, and three additional parties not named in the compliant—the City of Wichita, Kansas; Excel Corporation; and New Coleman Holdings, Inc.—collectively shall pay the United States $245,038.22 plus interest toward the United States' approximately $300,000.00 in unreimbursed response costs at the Site. In exchange, the United States gives all parties to the Decree a covenant not to sue and contribution protection for past response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, 930 Pennsylvania Avenue, NW, Washington, DC 20530, and should refer to *United States* v. *Apex Engineering, et al.,* DOJ Ref. #90–11–3–06696.

The proposed Decree may be examined at the office of the United States Attorney, District of Kansas, 500 State Avenue, Suite 360, Kansas City, KS 66101, 913–551–6730; and the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101, 913–551–7714. A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy of the Consent Decree, please refer to the referenced case and enclose a check in the amount of $9.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–7295 Filed 3–23–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Emergency Planning and Community Right-to-Know Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in the case of *United States and Communities for a Better Environment* v. *Sorenson Engineering, Inc.,* Civil Action No. EDCV 96–444–RT (VAPx) (C.D. Cal.), was lodged with the United States District Court for the Central District of California on March 2, 2000.

The proposed consent decree resolves claims that the United States asserted against Sorenson Engineering, Inc. in a civil complaint in intervention filed concurrently with the lodging of the consent decree. The complaint in intervention alleges that Sorenson failed to timely submit a toxic chemical release form for nitric acid and phosphoric acid in each year from 1990 through 1995, in violation of the requirements of section 313 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. 11023.

The proposed consent decree requires defendant to pay a civil penalty of $32,500. In addition, defendant is required to undertake two supplemental environmental projects to reduce tetrachloroethylene (perchloroethylene) emissions and to eliminate hexavalent chromium emissions at defendant's facility in Yucaipa, California. Finally, defendant is required to pay $20,000 to Communities for a Better Environment (CBE) in payment of CBE's attorney's fees and costs in this action.

The Department of Justice will accept comments relating to this consent decree for a period of thirty (30) days from the date of this publication. Address your comments to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and send a copy to the Environmental Enforcement Section, U.S. Department of Justice, 301 Howard Street, Suite 870, San Francisco, CA 94105, Attn: Robert Mullaney. Your comments should refer to *United States and Communities for a Better Environment* v. *Sorenson Engineering, Inc.,* Civil Action No. EDCV 96–444–RT (VAPx) (C.D. Cal.), and DOJ No. 90–11–2–06467.

You may examine the proposed consent decree at the office of the United States Attorney, Central District of California, Federal Building, Room 7516, 300 North Los Angeles Street, Los Angeles, California 90012. You may also obtain a copy of the consent decree by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. Your request for a copy of the consent decree should refer to *United States and Communities for a Better Environment* v. *Sorenson Engineering, Inc.,* Civil Action No. EDCV 96–444–RT (VAPx) (D.C. Cal.), and DOJ No. 90–11–2–06467, and must include a check for $4.50 (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. 00–7296 Filed 3–23–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI), DOJ.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board. The CJIS Advisory Policy Board is responsible for reviewing policy issues, uniform crime reports, and appropriate technical and operational issues related to the programs administered by the FBI CJIS Division and thereafter, make appropriate recommendations to the FBI Director. The topics to be discussed will include proposals and enhancements to the National Crime Information Center (NCIC) Convicted Sexual Offender Registry File, an update on the CJIS Security Policy, and an overview of the use of Immigration and Naturalization Service records in relation to the National Instant Criminal Background Check System (NICS). Discussion will also include the status on future enhancements to the Integrated Automated Fingerprint Identification Systems (IAFIS), IAFIS latent fingerprint processing, the National Crime Prevention and Privacy Compact, the NCIC Protection Order File, and other issues related to the IAFIS, NCIC, Law Enforcement Online, NICS, and Uniform Crime Reporting Programs.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the FBI's CJIS Division programs or wishing to address this session should notify the Designated Federal Employee, Mr. Don M. Johnson, Section Chief, Programs Development Section (304) 625–2740, at least 24 hours prior to the start of the session.

The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed not more than 15 minutes to present a topic.

DATES AND TIMES: The Advisory Policy Board will meet in open session from 9 a.m. until 5 p.m. on June 13–14, 2000.

ADDRESSES: The meeting will take place at the Portland Hilton, 921 S.W. Sixth Avenue, Portland, Oregon, telephone (503) 226–1611.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mrs. Diane M. Shaffer, Management Analyst, Advisory Groups Management Unit, Programs Development Section, FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149, telephone (304) 625–2615, facsimile (304) 625–5090.

Dated: March 14, 2000.

Don M. Johnson,

Section Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 00–7297 Filed 3–23–00; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2052–00]

Delegation of Authority To Accept and Adjudicate Certain Requests for Advance Parole in Connection With the HRIFA Adjustment Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice advises the public that effective April 1, 2000, the Immigration and Naturalization Service (Service) is delegating to the Director of the Nebraska Service Center the authority to accept and adjudicate requests for advance parole authorization filed by qualifying Haitian dependents of persons who have applied for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA). The Director of the Nebraska Service Center had previously been authorized to adjudicate such requests until March 31, 2000, through an interim rule published in the **Federal Register** on May 12, 1999, at 64 FR 25756. The delegation of authority provided in this public notice will allow the Director of the Nebraska Service Center to continue to provide this service to the public without interruption.

DATES: This notice is effective April 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Alice Khachikian, Immigration Officer, Parole Branch, Office of International Affairs, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536, telephone (202) 307–6084.

SUPPLEMENTARY INFORMATION:

What Is the Haitian Refugee Immigration Fairness Act (HRIFA)?

On October 21, 1998, the President signed into law a Fiscal Year 1999 Omnibus Appropriations Act, Public Law 105–277 (112 Stat. 2681). Division A, title IX of that statute, the HRIFA, contained a provision, section 902, that allows certain nationals of Haiti to adjust their status to that of lawful permanent resident. On May 12, 1999, the Department of Justice (Department) published an interim rule in the **Federal Register** at 64 FR 25756, with respects for comments, that implemented section 902 of the HRIFA.

Section 902 of the HRIFA provides that the Attorney General shall adjust the status of certain Haitian nationals who are physically present in the United States to that of lawful permanent resident. In order to be eligible for benefits under the HRIFA, an applicant must:

- Be a national of Haiti who was present in the United States on December 31, 1995;
- Have been physically present in the United States for a continuous period beginning not later than December 31, 1995, and ending not earlier than the date the application for adjustment is filed (not including any absence or absences amounting to 180 days or less in the aggregate);
- Properly file an application for adjustment before April 1, 2000;
- Be admissible to the United States under all provisions of section 212(a) of the Immigration and Nationally Act (Act), 8 U.S.C. 1182(a), except those provisions specifically excepted by the HRIFA; and
- Fall within one of the five classes of persons described in section 902(b)(1) of the HRIFA.

The five classes described in section 902(b)(1) of the HRIFA are:

(1) Haitian nationals who filed for asylum before December 31, 1995;

(2) Haitian nationals who were paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest;

(3) Haitian national children who arrived in the United States without parents and have remained without parents in the United States since such arrival;

(4) Haitian national children who became orphaned subsequent to arrival in the United States; and

(5) Haitian children who were abandoned by their parents or guardians prior to April 1, 1998, and have remained abandoned since such abandonment.

In addition, under section 902(d) of the HRIFA, the Haitian national spouse, child (i.e., under 21 years old), or unmarried son or daughter (i.e., 21 years old or older) of such principal adjustment applicant may apply for and be granted adjustment of status to that of lawful permanent resident. Although an unmarried son or daughter is required to have been physically present in the United States since December 31, 1995, neither the spouse or child need meet any physical presence requirements other than to be in the United States in order to apply for adjustment of status. Furthermore, unlike principal applicants, dependents have no deadline by which they must file their applications for adjustment of status under the HRIFA.

Under What Authority May an Alien Submit and the Service Consider a Request for Advance Parole for the Purpose of Coming to the United States in Order To Seek Adjustment of Status Under the HRIFA?

Service regulations at 8 CFR 245.15(t)(2) allow an otherwise eligible applicant who is outside the United States to request parole authorization to come to the United States to apply for benefits under section 902 of the HRIFA.

What Is the Process for Seeking an Advance Parole Authorization?

An eligible individual should file Form I–131, Application for Travel Document, with the USINS Nebraska Service Center, P.O. Box 87245, Lincoln, NE 68501–7245. The application must be accompanied by the filing fee for Form I–131 specified in 8 CFR 103.7(b)(1) (currently $95) and a photocopy of the complete Form I–485, Application to Register Permanent Residence or Adjust Status, which the requestor will file once he or she arrives in the United States. The applicant must include photocopies of all the supporting documentation listed on Forms I–485 and I–485 Supplement C, HRIFA Supplement to Form I–485 Instructions. However, the applicant should not submit the filing fee for the Form I–485, the medical report, the fingerprint card, or the local police clearances.

Although advance parole requests by persons outside the United States are normally filed with, and adjudicated by, the district director having jurisdiction over the overseas area (i.e., the district director in Mexico City, Mexico; Rome, Italy; or Bangkok, Thailand), the May 12, 1999, interim rule which implemented the HRIFA provided, at 8 CFR 245.15(t), that in most cases those advance parole requests submitted in connection with the HRIFA program would be filed with and adjudicated by, the Director of the Nebraska Service Center (NSC). The interim rule authorized the Director of the NSC to accept and adjudicate such requests through March 31, 2000, the deadline for the filing of HRIFA applications by principal applicants.

This delegation of authority was given to the Director of the NSC for two reasons. First, with the exception of applications filed by persons who are currently in proceedings before the Immigration Court, all applications for adjustment of status under the HRIFA must be filed with the NSC.

Accordingly, any files relating to the case (*e.g.*, the file of the principal applicant upon which the dependent's case depends) are likely to be at the NSC. Second, due to the NSC's larger staff and greater automation, it is in a better position to handle the volume of requests for parole under this program.

How Is the Advance Parole Process Being Changed?

There is no change in the process for requesting or being granted advance parole authorization in connection with the HRIFA applications. The only change is that the authorization for accepting and adjudicating parole requests is being delegated to the Director of the NSC from April 1, 2000, until further notice.

Under What Authority Is the Service Taking This Action?

Section 212(d)(5) of the Act authorizes the Attorney General to parole into the United States any alien applying for admission to the United States ''on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' In accordance with section 103 of the Act, the Attorney General has delegated authority for administration and enforcement of the Act, including section 212(d)(5) of the Act, to the Commissioner of the Immigration and Naturalization Service. *See* 28 CFR 0.105, 8 CFR 2.1. The Commissioner may in turn redelegate her authority to any other officer or employee of the Service. *See* 28 CFR 0.108, 8 CFR 2.1, 8 CFR 103.1

What Individuals Are Included in This Advance Parole Program?

In order to participate in this advance parole program, an individual must be a national of Haiti who is the dependent spouse or child of a Haitian who is a principal applicant for adjustment of status under the HRIFA. In addition, a Haitian national who is the dependent unmarried son or daughter of a Haitian who is a principal applicant for adjustment of status under the HRIFA may also participate in this advance parole program, but only if he or she was physically present in the United States on or before December 31, 1995, and has not been outside the United States for more than 180 days in the aggregate since that date.

What Other Factors Will Determine Whether the Request for Advance Parole Will Be Granted?

In accordance with the provisions of section 212(d)(5) of the Act previously cited, the Service will review other factors on a case-by-case basis. These other factors include, but are not limited to, a determination as to whether the requestor's application for adjustment of status is likely to be approved, whether the requestor has a criminal record or immigration record which warrants denial of the parole request, and whether there are other negative discretionary factors which argue against approval of the parole request.

Furthermore, with regard to a dependent child who is approaching his or her 21st birthday and cannot demonstrate that he or she has been continuously physically present in the United States since December 31, 1995, not counting absences totaling 180 days or less, the Service will deny the parole request if it is not feasible to process the request and issue the travel document in sufficient time for the requestor to travel to the United States, file a HRIFA adjustment application and have that application completely adjudicated before the requestor's 21st birthday.

Why Is the Delegation of Authority Being Applied to Applicants Under the HRIFA Program and Not to Applicants Under Section 202 of the Nicaraguan Adjustment and Central American Relief Act (NACARA)?

Unlike the HRIFA, section 202 of NACARA requires all applicants, including dependents, to have filed their applications for adjustment of status by March 31, 2000. It is, therefore, not possible for anyone to be paroled into the United States on or after April 1, 2000, for the purpose of applying for adjustment of status under section 202 of NACARA.

How Will the Service Detect and Deter Potential Fraudulent Requests for Parole Authorization Under This Program?

Before approving the request for advance parole, the Director of the NSC will review all Service records, and other records as appropriate, pertaining to both the requestor and the principal applicant for adjustment of status through whom the requestor's parole request is based. The Director of the NSC will approve the parole request only after the Service has approved the principal applicant's adjustment application and the Director of the NSC is satisfied that the requestor meets all criteria for parole previously discussed.

Once the parole request has been approved, the documentation will be forwarded to the Service Officer-in-Charge in Port-au-Prince, Haiti (or, if the alien resides in another country, to the appropriate U.S. consulate) for interview of the alien. If the Officer-in-Charge (or, where appropriate, the consular officer) is not fully satisfied that the requestor meets all requirements for parole in order to apply for adjustment of status under the HRIFA, that officer will not issue the parole authorization to the alien, but will instead cancel and return it to the Director of the NSC. If that officer is fully satisfied regarding these issues, he or she will issue the advance parole document allowing the alien to travel to the United States and be paroled into the country for 60 days. The alien must apply for adjustment of status within this 60-day period. Once the application for adjustment of status has been filed, the alien will be allowed to remain until the application for adjustment of status has been adjudicated.

What Will Happen to Individuals Who Fail To Apply for Adjustment of Status During the 60-Day Parole Period?

If the individual paroled into the United States fails to apply for adjustment of status within the 60-day parole period, he or she will be subject to expedited removal from the United States under section 235(b)(1)(A)(i) of the Act.

When Will This Delegation of Authority Begin and How Long Will It Be in Effect?

This delegation of authority begins April 1, 2000, and will remain in effect indefinitely. If the Service should decide to terminate this delegation, a notice to that effect will be published in the **Federal Register**.

Dated: March 20, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–7410 Filed 3–22–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 9:30 a.m., Tuesday, March 28, 2000.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately one case decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. This case was originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Sam Robertson, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: March 21, 2000.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 00–7407 Filed 3–22–00; 10:21 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Public Announcement Pursuant to the Government in the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 10:30 a.m., Tuesday, March 28, 2000.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.

2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.

3. Proposed/Interim Rules for D.C. Code Offenders.

AGENCY CONTACT: Sam Robertson, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: March 21, 2000.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 00–7408 Filed 3–22–00; 10:22 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this 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

Connecticut
- CT000001 (Feb. 11, 2000)
- CT000003 (Feb. 11, 2000)
- CT000004 (Feb. 11, 2000)

Massachusetts
- MA000001 (Feb. 11, 2000)
- MA000003 (Feb. 11, 2000)
- MA000005 (Feb. 11, 2000)
- MA000007 (Feb. 11, 2000)
- MA000012 (Feb. 11, 2000)
- MA000013 (Feb. 11, 2000)
- MA000017 (Feb. 11, 2000)
- MA000018 (Feb. 11, 2000)
- MA000019 (Feb. 11, 2000)
- MA000020 (Feb. 11, 2000)

Maine
- ME000005 (Feb. 11, 2000)
- ME000007 (Feb. 11, 2000)
- ME000010 (Feb. 11, 2000)
- ME000018 (Feb. 11, 2000)
- ME000022 (Feb. 11, 2000)
- ME000037 (Feb. 11, 2000)

New Jersey
- NJ000003 (Feb. 11, 2000)
- NJ000005 (Feb. 11, 2000)

New York

NY000003 (Feb. 11, 2000)
NY000005 (Feb. 11, 2000)
NY000007 (Feb. 11, 2000)
NY000008 (Feb. 11, 2000)
NY000009 (Feb. 11, 2000)
NY000010 (Feb. 11, 2000)
NY000012 (Feb. 11, 2000)
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NY000041 (Feb. 11, 2000)
NY000043 (Feb. 11, 2000)
NY000044 (Feb. 11, 2000)
NY000045 (Feb. 11, 2000)
NY000051 (Feb. 11, 2000)
NY000055 (Feb. 11, 2000)
NY000066 (Feb. 11, 2000)
NY000078 (Feb. 11, 2000)

Volume II

Pennsylvania
PA000005 (Feb. 11, 2000)
PA000006 (Feb. 11, 2000)
PA000026 (Feb. 11, 2000)

Volume III

Georgia
GA000022 (Feb. 11, 2000)
Kentucky
KY000002 (Feb. 11, 2000)
KY000004 (Feb. 11, 2000)
KY000027 (Feb. 11, 2000)
KY000028 (Feb. 11, 2000)
KY000029 (Feb. 11, 2000)

Volume IV

Illinois
IL000001 (Feb. 11, 2000)
IL000008 (Feb. 11, 2000)
IL000009 (Feb. 11, 2000)
IL000011 (Feb. 11, 2000)
IL000013 (Feb. 11, 2000)
Michigan
MI000002 (Feb. 11, 2000)
MI000004 (Feb. 11, 2000)
MI000005 (Feb. 11, 2000)
MI000007 (Feb. 11, 2000)
MI000047 (Feb. 11, 2000)
MI000062 (Feb. 11, 2000)
MI000064 (Feb. 11, 2000)
MI000077 (Feb. 11, 2000)
MI000081 (Feb. 11, 2000)
MI000082 (Feb. 11, 2000)
MI000083 (Feb. 11, 2000)
MI000084 (Feb. 11, 2000)
MI000088 (Feb. 11, 2000)
Minnesota
MN000007 (Feb. 11, 2000)
Ohio
OH000002 (Feb. 11, 2000)
OH000028 (Feb. 11, 2000)
OH000029 (Feb. 11, 2000)
OH000034 (Feb. 11, 2000)

Volume V

Nebraska
NE000001 (Feb. 11, 2000)
NE000002 (Feb. 11, 2000)
NE000003 (Feb. 11, 2000)
NE000019 (Feb. 11, 2000)

Volume VI

North Dakota
ND000001 (Feb. 11, 2000)
ND000003 (Feb. 11, 2000)
ND000004 (Feb. 11, 2000)
ND000054 (Feb. 11, 2000)

Volume VII

None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 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.

Dated: Signed at Washington, D.C. this 15th Day of March 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–7058 Filed 3–23–00; 8:45 am]

BILLING CODE 4510–27–M

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* April 3, 2000.
Time: 9 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2000 deadline.

2. *Date:* April 3, 2000.
Time: 9 a.m. to 5:30 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public

Programs at the February 1, 2000 deadline.

3. *Date:* April 7, 2000.

Time: 9 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2000 deadline.

4. *Date:* April 7, 2000.

Time: 9 a.m. to 5:30 p.m.

Room: 426.

Program: This meeting will review applications for Special Projects, submitted to the Division of Public Programs at the February 1, 2000 deadline.

5. *Date:* April 10, 2000.

Time: 9 a.m. to 5:30 p.m.

Room: 426.

Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 1, 2000 deadline.

6. *Date:* April 14, 2000.

Time: 9 a.m. to 5:30 p.m.

Room: 415.

Program: This meeting will review applications for Humanities Projects in Libraries and Archives, submitted to the Division of Public Programs at the February 1, 2000 deadline.

7. *Date:* April 25, 2000.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education at the March 1, 2000 deadline.

8. *Date:* April 26, 2000.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers, submitted to the Division of Education at the March 1, 2000 deadline.

9. *Date:* April 27, 2000.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education at the March 1, 2000 deadline.

10. *Date:* April 28, 2000.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education at the March 1, 2000 deadline.

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 00–7298 Filed 3–23–00; 8:45 am]

BILLING CODE 7536–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 498, File No. 270–435, OMB Control No. 3235–0488;

Rule 30a–1, File No. 270–210, OMB Control No. 3235–0219.

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'') has submitted to the Office of Management and Budget requests for extension on the previously approved collections of information discussed below.

Rule 498 Under the Securities Act of 1933, Profiles for Certain Open-End Management Investment Companies

Rule 498 (17 CFR 230.498) permits open-end management investment companies (or a series of an investment company organized as a series company, which offers one or more series of shares representing interests in separate investment portfolios) (''funds'') to provide investors with a ''profile'' that contains a summary of key information about a fund, including the fund's investment objectives, strategies, risks and performance, and fees in a standardized format. The profile provides investors the option of buying fund shares based on the information in the profile or reviewing the fund's prospectus before making an investment decision. Investors purchasing shares based on a profile receive the fund's prospectus prior to or with confirmation of their investment in the fund.

Consistent with the filing requirement of a fund's prospectus, a profile must be filed with the Commission thirty days before first use. Such a filing allows the Commission to review the profile for compliance with Rule 498. Compliance with the rule's standardized format assists investors in evaluating and comparing funds.

It is estimated that approximately 176 initial profiles and 129 updated profiles are filed with the Commission annually. The Commission estimates that each profile contains on average 1.25 portfolios, resulting in 220 portfolios filed annually on initial profiles and 161 portfolios filed annually on updated profiles. The number of burden hours for preparing and filing an initial profile per portfolio is 25. The number of burden hours for preparing and filing an updated profile per portfolio is 10. The total burden hours for preparing and filing initial and updated profiles under Rule 498 is 7,110, representing a decrease of 6,640 hours from the prior estimate of 13,750. The reduction in burden hours is attributable to the lower number of profiles actually prepared and filed as compared to the previous estimates.

The collection of information under Rule 498 is voluntary. The information provided by Rule 498 is not kept confidential.

Rule 30a–1 Under the Investment Company Act of 1940, Annual Reports

Rule 30a–1 [17 CFR 270.30a–1] requires that investment companies registered under the Investment Company Act file annual and periodic reports with the Commission and send to the Commission copies of their reports to shareholders. These requirements are designed to ensure that the Commission has enough information in its files to effectively monitor the operations of each company and to provide investors with the kind of current information that is necessary to detect problems in the operations of the company.[1]

There is no burden associated with complying with Rule 30a–1. The respondent's reporting burden and cost burden under Rule 30a–1 is associated with Form N–SAR. Those burdens and costs are discussed in the submission for Form N–SAR.

The collection of information under Rule 30a–1 is mandatory. The information provided by Rule 30a–1 is not kept confidential.

The 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 representative survey or study of the cost of Commission rules and forms.

The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information

[1] Annual and periodic reports to the Commission become part of its public files and, therefore, are available for use by prospective investors and shareholders.

unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 20, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7306 Filed 3–23–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24342; 812–11800]

Medallion Financial Corp.; Notice of Application

March 17, 2000.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant, Medallion Financial Corp., requests an order approving its Amended and Restated 1996 Non-Employee Director Stock Option Plan (the ''Amended Plan''). The requested order would supersede an existing order.[1]

FILING DATES: The application was filed on October 4, 1999. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 11, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicant, 437 Madison Avenue, 38th Floor, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Senior Counsel, at (202) 942–0553, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. Applicant is business development company (''BDC'') within the meaning of section 2(a)(48) of the Act.[2] Applicant's primary business is the origination and servicing of loans financing the purchase of taxicab medallions and related assets. Applicant is managed by its executive officers under the supervision of its board of directors (''Board'') and has retained FMC Advisers, Inc. (the ''Sub-Adviser''), an investment adviser registered under the Investment Advisers Act of 1940, as its investment adviser. The Sub-Adviser is paid a fixed fee on a monthly basis and receives no performance-based compensation.

2. Applicant requests an order under section 61(a)(3)(B) of the Act approving the Amended Plan [3] for current and future directors who are neither officers nor employees of applicant (''Eligible Directors''). The Board consists of seven members, five of whom are Eligible Directors.[4] On February 24, 1999, applicant's Board approved the Amended Plan, and on June 16, 1999, applicant's shareholders approved the Amended Plan. The Amended Plan will become effective on the date on which the SEC issues an order on the application (the ''Approval Date'').

3. The Amended Plan provides that: (i) On the Approval Date, the Eligible Director elected at the June 16, 1999 annual shareholders' meeting will be granted options to purchase 9,000 shares of applicant's common stock at the then Current Market Value;[5] (ii) at each annual shareholders' meeting after the Approval Date, each Eligible Director elected or reelected at that meeting to a three-year term will be granted options to purchase 9,000 shares of applicant's common stock; and (iii) upon the election, reelection or appointment of an Eligible Director to the Board other than at the annual shareholders' meeting, that Eligible Director will be granted an option to purchase that number of shares of common stock determined by multiplying 9,000 by a fraction, the numerator of which is equal to the number of whole months remaining in the new director's term and the denominator of which is 36. A total of 100,000 shares of applicant's common stock is reserved for issuance under the Original/Amended Plan.

4. Options granted under the Amended Plan become exercisable at each annual shareholders' meeting with respect to that number of shares that is determined by multiplying the number of shares covered by the option by a fraction, the numerator of which will equal the number of whole months elapsed since the most recent to have occurred of either: (i) The date of grant; or (ii) the last annual shareholder's meeting, and the denominator of which will be the number of whole months for which the Eligible Director was elected. The exercise price of an option will be: (i) Not less than the Current Market Value of applicant's common stock; or (ii) if the stock is not quoted on the date of grant, equal to the current net asset value of the common stock as determined in good faith by the members of the Board not eligible to participate in the Amended Plan. To the extent permitted by law, the option exercise price may be paid in whole or in part in cash, by a note or in installments, or with shares of

[1] *Medallion Financial Corp.,* Investment Company Act Release Nos. 22350 (Nov. 25, 1996) (notice) and 22417 (Dec. 23, 1996) (order).

[2] Section 2(a)(48) defines a BDC to be any closed-end investment company the operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of those securities.

[3] The Amended Plan would replace the 1996 Non-Employee Director Stock Option Plan (the ''Original Plan'').

[4] Each Eligible Director receives $10,000 a year for each year of service, $2,000 for the first Board meeting held per quarter and $1,000 for any additional Board meetings held in that quarter, $250 for each telephonic meeting of the Board, $1,000 for the first committee meeting held per quarter and for any committee meetings held on a date when there is not also a Board meeting, $500 for all other committee meetings and for each telephonic meeting in which the director participates, and reimbursement of related expenses. The directors receive no other compensation for their services to applicant.

[5] ''Current Market Value'' is defined as the closing price as reported in the Wall Street Journal, Northeast Edition, as quoted on the NASDAQ National Market on the date of grant.

applicants' common stock or such other lawful consideration as the non-Eligible Directors determine. If the option exercise price is paid: (i) By note or in installments, any such arrangement will comply with section 62 of the Act; (ii) with shares of applicant's common stock, applicant will seek exemptive relief from section 63 of the Act, or (iii) by such other lawful consideration as the non-Eligible Directors determine, applicant will seek exemptive relief from section 57(a)(1) of the Act.

5. An Eligible Director holding exercisable options under the Amended Plan who ceases to be an Eligible Director for any reason, other than death, may exercise the rights the director had under the options on the date the director ceased to be an Eligible Director for a period of up to three months following that date. No additional options held by the director will become exercisable after the three month period. Upon the death of an Eligible Director, those entitled to do so under the director's will or the laws of descent and distribution will have the right, at any time within twelve months after the date of death, to exercise in whole or in part any rights which were available to the director at the time of the director's death. The Amended Plan will expire ten years from December 23, 1996, the date on which the Original Plan was approved by the SEC. Each option granted under the Amended Plan will expire five years from the date of grant. Options will not be transferable except for disposition by will or intestacy.

6. Applicant's officers and employees, including employee directors, are eligible to receive stock options under the Medallion Financial Corp. 1996 Stock Option Plan (the ''Employee Plan''). Eligible Directors are not eligible to receive stock options under the Employee Plan. The total number of shares of common stock issuable under the Original/Amended Plan and the Employee Plan is approximately 1,600,000 (approximately 1,500,000 shares are reserved for issuance under the Employee Plan and approximately 100,000 are reserved for the Original/Amended Plan). The shares reserved for issuance under the two plans represent 11.4% of the 14,024,433 shares of applicant's common stock outstanding as of December 31, 1999. Applicant has no warrants, options or rights to purchase its outstanding voting securities other than those granted or to be granted to its directors, officers and employees pursuant to the Original/Amended Plan and the Employee Plan.

Applicant's Legal Analysis

1. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its Eligible Directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (i) The options expire by their terms within 10 years; (ii) The exercise price of the options is not less than current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (iii) The proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the SEC on the basis that the terms of the proposal are fair and reasonable and do not involve overreaching of the BDC or its shareholders; (iv) The options are not transferable except for disposition by gift, will, or intestacy; (v) No investment adviser of the BDC receives any compensation described in paragraph (1) of section 205 of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (vi) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3)(B) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant represents that the terms of the Amended Plan meet all the requirements of section 61(a)(3)(B) of the Act. Applicant contends that the options that may be granted under the Amended Plan have substantially the same terms as the options that are currently issuable under the Original Plan, differing only in the calculation of the number of share issuable upon the election, reelection or appointment of an Eligible Director. In addition, applicant states that on the Approval Date, the number of voting securities that would result from an exercise of all options issued or issuable to the officers, directors and employees under the Employee Plan and the Original/Amended Plan is approximately 1,600,000 shares, or 11.4% of applicant's outstanding common stock as of December 31, 1999. Applicant asserts that, given the small number of shares of common stock issuable upon the exercise of options under the Amended Plan, the exercise of options should not have a substantial dilutive effect on the net asset value of applicant's common stock. Further, the options will vest in three annual installments, commencing with the first annual shareholder's meeting after an Eligible Director's election, appointment or reelection, and only if the Eligible Director continues to serve on applicant's Board.

4. Applicant submits that the terms of the Amended Plan are fair and reasonable and do not involve overreaching of applicant or its shareholders. Applicant states that the Eligible Directors are actively involved in the oversight of applicant's affairs and that it relies on the judgment and experience of its directors. Applicant also states that the extensive and varied financial, regulatory, political, and legal experience of its directors enhance applicant's ability to accomplish its investment objectives. Applicant submits that the Amended Plan will provide significant incentives to the Eligible Directors to remain on the Board and to devote their best efforts to the success of applicant's business. Applicant also states that the options will provide a means for the Eligible Directors to increase their ownership interests in applicant, thereby ensuring close identification of their interests with the interests of applicant's shareholders.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7274 Filed 3–23–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3241]

State of Ohio

As a result of the President's major disaster declaration on March 7, 2000, and an amendment thereto on March 10, I find that the Counties of Adams, Gallia, Jackson, Lawrence, Meigs, Pike, and Scioto in the State of Ohio constitute a disaster area due to damages caused by severe storms and

flooding beginning on February 18, 2000 and continuing through March 2, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 6, 2000 and for economic injury until the close of business on December 7, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Athens, Brown, Highland, Ross, and Vinton in the State of Ohio may be filed until the specified date at the above location.

Any counties contiguous to the above-named primary counties and not listed herein have been covered under a separate declaration for the same occurrence.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere: 7.625%.

Homeowners Without Credit Available Elsewhere: 3.812%.

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: 6.750%.

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000%.

The number assigned to this disaster for physical damage is 324106 and for economic injury the number is 9G7500.

It should be noted that this Presidential declaration supersedes the SBA disaster declaration approved on February 28, 2000 for the same occurrence.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 13, 2000.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 00–7264 Filed 3–23–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region IV, North Florida District, Jacksonville, FL; Advisory Council Meeting; Public Meeting

The U. S. Small Business Administration, North Florida District Office, Jacksonville, Florida, Advisory Council will hold a public meeting from 12:00 p.m. to 2 p.m., April 20, 2000, at the Crowley American Transport, Inc. Building, First Floor Conference Room, 9487 Regency Square Boulevard, Jacksonville, Florida, to discuss such matters as may be presented by members, staff of the U. S. Small Business Administration, or others present.

For further information, write or call Claudia D. Taylor, U. S. Small Business Administration, 7825 Baymeadows Way, Suite 100–B, Jacksonville, Florida 32256–7504, telephone (904) 443–1933.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–7350 Filed 3–23–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region IX—Hawaii District Advisory Council; Public Meeting

The Small Business Administration Region IX Hawaii District Advisory Council, located in the geographical area of Honolulu, Hawaii, will hold a public meeting at 10:30 a.m. on Wednesday, April 12, 2000, at the Business Information and Counseling Center, 1111 Bishop Street, Suite 204, Training Center, Honolulu, HI 96813, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

FOR FURTHER INFORMATION, WRITE OR CALL: Andrew K. Poepoe, District Director U.S. Small Business Administration 300 Ala Moana Boulevard, Room 2–235 Honolulu, Hawaii 96850–4981 (808) 541–2965

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–7263 Filed 3–23–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

[FHWA Docket No. FHWA–98–4317]

Transportation Equity Act for the 21st Century; Final Guidance for the Congestion Mitigation and Air Quality Improvement Program; Correction

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice; issuance of final guidance; correction.

SUMMARY: This document contains a correction to the notice issuing final guidance on section 1110 of the Transportation Equity Act for the 21st Century (TEA–21) for the congestion mitigation and air quality improvement program (CMAQ) that was published on February 23, 2000 at 65 FR 9040. The notice published on February 23, 2000, contained an incorrect docket number. This document corrects a typographical error in the docket number.

DATES: This correction is effective on March 24, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. S. Reid Alsop, HCC–30, Office of the Chief Counsel, (202) 366–1371 or Mr. Mike Savonis, HEPN–10, Office of Environment and Planning, (202) 366–2080. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Need for Correction

The Federal Highway Administration and the Federal Transit Administration published a notice issuing final guidance on the CMAQ program on February 23, 2000 at 65 FR 9040. In the heading of the notice, it incorrectly states ''FHWA Docket No. FHWA–99–4317.'' It should have stated ''FHWA Docket No. FHWA–98–4317.'' This document corrects that number.

In notice FR Doc., 00–4224, published on February 23, 2000 (65 FR 9040), make the following correction: On page 9040, in the second column, in the heading of the document, correct the docket number to read FHWA Docket No. FHWA 98–4317.

Authority: 23 U.S.C. 315; sec. 1110, Pub. L. 105–178, 112 Stat. 107 (1998); 49 CFR 1.48 and 1.51.

Issued on: March 10, 2000.

Karen E. Skelton,

Chief Counsel, Federal Highway Administration.

[FR Doc. 00–7223 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (2000–2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the second quarter 2000 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter 2000 RCAF (Unadjusted) is 1.050. The second quarter 2000 RCAF (Adjusted) is 0.593. The second quarter 2000 RCAF–5 is 0.577.

EFFECTIVE DATE: April 1, 2000.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. TDD for the hearing impaired: (202) 565–1695.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DAY TO DAY OFFICE SOLUTIONS, Suite 210, 1925 K Street, NW, Washington, DC 20423–0001, telephone (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: March 20, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–7329 Filed 3–23–00; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register

Vol. 65, No. 58

Friday, March 24, 2000

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.

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304

Commonwealth Edison Company Zion Nuclear Power Station, Units 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

Correction

In notice document 00–5743 beginning on page 12586 in the issue of Thursday, March 9, 2000, make the following correction:

On page 12587, in the first column, in the 8th line, ''April 29, 2000'' should read ''March 29, 2000''.

[FR Doc. C0–5743 Filed 3–23–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Extension: Rule 17a–6; SEC File No. 270–433; OMB Control No. 3235–0489]

Request Under Review by Office of Management and Budget

Correction

In notice document 00–6202 on page 13799 in the issue of Tuesday March 14, 2000, the agency 's name is corrected to read as set forth above.

[FR Doc. C0–6202 Filed 3–23–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release Nos. 33–7728A, IC–23958A, IA–1815A; File No. S7–25–95]

RIN 3235–AG27

Personal Investment Activities of Investment Company Personnel

Correction

In rule document 00–5914 beginning on page 12943 in the issue of Friday, March 10, 2000, make the following correction:

On page 12934, in the second column, above the signature, ''Dated: March 6, 200'' should read ''Dated: March 6, 2000''.

[FR Doc. C0–5914 Filed 3–23–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42494; File No. SR– NASD–00–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Delay of the Implementation Date of Changes to Riskless Principal Trade Reporting Rules

March 3, 2000.

Correction

In notice document 00–5916, beginning on page 13069, in the issue of Friday, March 10, 2000, make the following correction:

On page 13069, in the third column, the date line is added to read as set forth above.

[FR Doc. C0–5916 Filed 3–23–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27149]

Filings Under the Public Utility Holding Company Act of 1935, as Amended, (''Act'')

Correction

In notice document 00–6077 beginning on page 13349 in the issue of Monday, March 13, 2000, make the following corrections:

1. On page 13349, in the third column, the agency's name is corrected to read as set forth above.

2. On the same page, in the same column, in the sixth line from the bottom, ''March 8, 2000'' should read ''March 28, 2000''.

[FR Doc. C0–6077 Filed 3–23–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
March, 24, 2000

Part II

Department of State

Office of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 1999; Notice

DEPARTMENT OF STATE

[Public Notice 3250]

Office of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies In Calendar Year 1999

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 1999 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the **Federal Register** is required by Section 7342(f) of Title 5, Unites States Code, as added by Section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Public Law 95–105, August 17, 1977, 91 Stat. 865).

Dated: March 10, 2000.

Bonnie Cohen,

Under Secretary for Management.

REPORT OF TANGIBLE GIFTS

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Executive Office of The President			
President	40″ x 29″ gilt framed oil painting of an autumn landscape that depicts a shepherd and goats. Recd—October 20, 1998. Est. Value—$1500. Archives Foreign.	His Excellency Petru Lucinschi, President of the Republic of Moldova.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Six bottles of sake. Recd—November 20, 1998. Est. Value—$72. Accepted by Another Government Agency.	His Excellency, Keizo Obuchi, The Prime Minister of Japan and Mrs. Obuchi.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Two bonsai trees. One is a 250-year-old Ezo Spruce, $9000. The other is an 80-year-old Trident Maple, $5500. Recd—November 20, 1998. Est. Value—$14500. Accepted by Another Government Agency.		
President	49″ tall wood chair with a black leather seat and carved back splat that depicts the Mexican and American flags, an eagle, a snake, and two hands, and reads ''USA and Mexico.'' Recd—January 15, 1999. Est. Value—$1000. Archives Foreign.	Sr. Victor Cervera Pacheco, Governor of Yucatan Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Rosary with white glass beads and silver-tone crucifix, $15. (2) Three limited edition Vatican coins: bronze, silver, and 22 kt. gold. Each is 44 mm diameter and is decorated with an image of the Pope and Latin text, $1000. Recd—January 26, 1999. Est. Value—$1015. Archives Foreign.	His Holiness John Paul II	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Paperback. ''The Routes of Al-Andalus,'' by various authors, $15. (2) Three hardcover books. ''The Fires of Excellence,'' by Miles Danby, ''The Alhambra in Detail,'' by Aurelio Cid Acedo, and ''American Orientalists,'' by Gerald Ackerman, $45. (3) 38″ x 30″ gilt framed and matted series of four etchings, two depict landscapes and two depict buildings in Spain, $600. Recd—February 3, 1999. Est. Value—$660. Archives Foreign.	His Majesty Juan Carlos I, King of Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	31″ x 26″ silver-tone framed and double matted antique map circa 1669 of the United States, Canada, and Greenland; sight size 24″ x 18″. Recd—February 19, 1999. Est. Value—$1200. Archives Foreign.	His Excellency Jacques Chirac, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	4″ x 6″ ornate reticulated silver tray. Recd—March 5, 1999. Est. Value—$1400. Archives Foreign.	His Excellency Massimo D'Alema and Mrs. D'Alema, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) 13″ x 22″ ceramic wall hanging that depicts a boy peeking through a cactus, $185. (2) Paperback. ''Ceramica,'' by Cesar Sermeno, $5. Recd—March 9, 1999. Est. Value—$190. Archives Foreign. (1) Bottle of Foucher white wine. (2) Bottle of Cousine-Macul cabernet sauvignon. (3) Bottle of Finlandia vodka. (4) Bottle of Johnnie Walker Black Label scotch. (5) Bottle of Corodniu champagne. Recd—March 9, 1999. Est. Value—$120. Accepted by Another Government Agency.	His Excellency Armando Calderon Sol, President of the Republic of El Salvador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) 9″ bronze sculpture that depicts hands reaching upward, on a 5″ square black wooden base, $500. (2) Two 11″ x 14″ x 6″ inlaid wooden boxes that contain stationery and a black pen, personalized for the President and First lady, $800. (3) Two cases of refill stationery, $400. Recd—March 10, 1999. Est. Value—$1700. Archives Foreign.	His Excellency Alvaro Arzu Irigoyen, President of the Republic of Guatemala.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) 23″ x 16″ paper scroll honoring the President's visit to Honduras, $25. (2) 7″ long silver key, held in a 14″ x 10″ x 4″ wooden box with blue velvet lining, $400. Recd—March 11, 1999. Est. Value—$425. Archives Foreign.	The Honorable Dr. Vilma R. de Castellanos, Mayor of Tegucigalpa, Tegucigalpa, Honduras.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	18″ x 15″ black wood framed and matted watercolor painting of a white domed building, a fountain, and trees. Recd—March 17, 1999. Est. Value— $1200. Archives Foreign. Dublin crystal oval dish with etching that reads ''Presented to Bill Clinton, President of the United States on the Occassion of St. Patrick's Day, 1999, by the Taoesich Bertie Ahern''; approximately 14″ long x 16″ tall x 18″ wide. Recd—March 17, 1999. Est. Value—$1200. Archives Foreign.	His Excellency Bertie Ahern, Prime Minister of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	20″ x 13″ mother-of-pearl and abalone oval shadow box Nativity scene with a horseshoe-shaped crown on top. Inside the crown is an angel and a man. Recd—March 23, 1999. Est. Value—$750. Archives Foreign.	Mr. Yasser Arafat, Chairman, Executive Committee of the Palestine Liberation Organization.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	5″ square x 3″ tall Christian Dior men's burlwood jewelry box with removable top drawer lined with suede, and lid with small gilt handle. Recd—April 23, 1999. Est. Value—$250. Archives Foreign.	His Excellency Jacques Chirac, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) 6″ x 7″ bronze statute of three men and one woman on a ship, on a marble base, $750. (2) 15″ x 5″ diameter green vase handpainted with purple and blue stemmed irises, $250. Recd—April 24, 1999. Est. Value—$1000. Archives Foreign.	His Excellency Leonid Kuchma, President of Ukrane.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	5″ x 2″ silver box with lid rimmed with 18 kt. gold border and the seal of Kazakhstan engraved on top. Recd—April 14, 1999. Est. value—$2000. Archives Foreign.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	8″ tall 14 kt. gold and silver tree with green enamel leaves and grapes, on a 3″ x 6″ marble stand. Recd—April 24, 1999. Est. Value—$2500. Archives Foreign.	His Excellency Eduard Shevardnadze, President of Georgia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	.5 liter bottle of liquor, vintage 1963. Recd—May 3, 1999. Est. Value—$50. Accepted by Another Government Agency.	His Excellency Viktor Orban, The Prime Minister of the Republic of Hungary and Mrs. Orban.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Gilt framed pastel and gold wash painting of Mount Fuji at sunset with a pine forest in the foreground, under glass; sight size 16″ x 20″; signed in calligraphy. Recd—May 3, 1999 Est. Value—$2500. Archives Foreign.	His Excellency Keizo Obuchi, The Prime Minister of Japan and Mrs. Obuchi.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Three bottles of 1995 Szepsy wine. Recd—June 8, 1999. Est. Value—$90. Accepted by Another Government Agency.	His Excellency Arpad Goncz, The President of the Republic of Hungary and Mrs. Goncz.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Handcrafted 32 piece lead crystal chess set. Board is 21″ square with black marble base and crystal top. Each playing piece is 2–3″ tall, one side has a white marble base, the other has a black marble base. Recd—June 22, 1999. Est. Value—$1400. Archives Foreign.	His Excellency Dr. Janez Drnovsek, Prime Minister of the Republic of Slovenia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	13″ x 27″ wood carving of a bird and two bunches of grapes, with a 2.5″ wooden border. Recd—June 24, 1999. Est. Value—$500. Archives Foreign.	His Excellency Ljubco Georgievski, The Prime Minister of the Former Yugoslav Republic of Macedonia and Mrs. Georgievska.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	65″ x 78″ earth-tone wool tapestry wall hanging reproduction that depicts a city street filled with people. Recd—July 1, 1999. Est. Value—$2500. Archives Foreign.	His Excellency Mohamed Hosny Mubarak, President of the Arab Republic Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Leather-bound antique book with gilt edging. ''The Recovery of Jerusalem,'' by Captain Charles Wilson and Captain Warren; original edition published 1871. Recd—July 16, 1999. Est. Value—$700. Archives Foreign.	His Excellency Ehud Barak, The Prime Minister of Israel and Mrs. Barak.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	8″ diameter carved gold chased metal and vermeil tray with tree matching 4″ tall pedestal cordial glasses. Recd—July 27, 1999. Est. Value—$300. Archives Foreign.	His Excellency Sergei Stepashin, Chairman of the Government of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Antique leather-bound books. (1) Six volume set of ''The World Crisis,'' by Winston Churchill, first edition, $2400. (2) ''Historic, Military, and Naval Anecdotes,'' by Edward Orme; illustrated with hand-colored lithographs, first edition, $3000. (3) ''Sonnets,'' by the Italian poet Petrarch, hand-illuminated edition, $5000. (4) ''Commentaries,'' by Caesar, edited by Clark in a large rebacked folio with maps, plans, and plates, $4000. Recd—September 1, 1999. Est. Value—$14400. Archives Foreign. 8″ x 11″ green leather portfolio embossed with the seal of Morocco. Recd—September 1, 1999. Est. Value—$30. Archives Foreign.	His Majesty Mohamed VI, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	59″ x 67″ sage, beige, brown, and maroon colored rug titled ''Whaka Hura''; limited edition. Recd—September 13, 1999. Est. Value—$2824. Archives Foreign.	His Excellency Sir Michael Hardie-Boys, G.C.M.G., Governor General of New Zealand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	9″ diameter bronze incense burner with animal head ring handles. Bowl and legs have inlaid lacquer, shell, and mother-of-pearl traditional motifs and figures. Matching lid has open ventilation slots, inlaid folk instruments motif, and is capped with a ''fu dog'' finial. Burner stands on a tripodial base with plaque that reads ''With the compliments from H.E. Mr. Phan Van Khai, Prime Minister, Socialist Republic of Vietnam.'' Recd—September 13, 1999. Est. Value—$500. Archives Foreign.	His Excellency Phan Van Khai, Prime Minister of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	(1) 8″ x 17″ etched and sand blasted blue crystal canoe, $125. (2) Two woven pouches that contain a greenstone from the Ngai Tahu tribe and a Kauri tree seed, a symbolic tree in New Zealand, $30. (3) 18″ x 18″ x 10″ black wooden box with wool lining and a removable lid with an applied leaf design, $45. Recd—September 13, 1999. Est. Value—$200. Archives Foreign.	The Right Honorable Jenny Shipley, P.C., The Prime Minister of New Zealand and Mr. Shipley.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	24″ x 20″ gilt wood framed and matted impressionist style winter landscape oil painting titled ''Vienvra le Temps,'' that depicts a hiking man sitting under a tree next to a campfire; painted and signed by Serge Brunoni; sight size 12″ x 16″. Recd—September 30, 1999. Est. Value—$800. Archives Foreign.	The Right Honorable Jean Chretien, P.C., M.P., Prime Minister of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	11″ tall x 9″ long x 3″ wide solid bronze sculpture of a woodland caribou; signed by artist Huguette Joneas. Recd—October 9, 1999. Est. Value—$1200. Archives Foreign.	The Honorable Lucien Bouchard, Prime Minister of the Province of Quebec.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	14″ cut crystal Valaska Bela vase with a snowflake motif and sawtooth border. Recd—October 9, 1999. Est. Value—$550. Archives Foreign.	His Excellency Eduard Kukan, Minister of Foreign Affairs of the Slovak Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Hardcover book. ''The Mosaics of Jordan,'' by Michele Piccirillo. Recd—October 12, 1999. Est. Value—$65. Archives Foreign.	Their Majesties King Abdullah II and Queen Rania al Abdullah, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	9″ x 10″ long silver model of a single-sailed Norwegian Viking boat, which sits on a 6″ x 7.5″ wooden base with silver plaque. Recd—October 15, 1999. Est. Value—$700. Archives Foreign.	His Excellency Kjell Magne Bondevik, Prime Minister of Norway.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Gilt framed shadow box that contains a gold-tone reproduction of a Panamanian Huaca. Recd—October 19, 1999. Est. Value—$200. Archives Foreign.	Her Excellency Mireya Moscoso, President of the Republic of Panama.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	10.5″ tall x 10″ wide silver eagle with vermeil gold beak and talons, that sits on a wooden base with plaque. Recd—October 28, 1999. Est. Value—$2800. Archives Foreign.	His Excellency Olusegun Obasanjo, The President of the Federal Republic of Nigeria and Mrs. Obasanjo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Three hardcover books. ''Norway,'' ''The Other Side of Blue,'' and ''Living in Norway,'' $60. (2) 8″ x 10″ framed photograph of King Harald and Queen Sonja, $20. Recd—November 1, 1999. Est. Value—$80. Archives Foreign.	Their Majesties, The King and Queen of Norway.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	18″ tall bronze abstract sculpture of a man and woman standing together, titled ''Unity,'' signed by artist Kjersti, W., that sits on a 8″ x 5.5″ black marble base. Recd—November 1, 1999. Est. Value—$3000. Archives Foreign.		
President	15″ x 19″ mother-of-pearl and abalone shadow box Nativity scene. Recd—November 1, 1999. Est. Value—$1000. Archives Foreign.	Mr. Yasser Arafat, Chairman, Committee of the Palestine Liberation Organization.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	16″ x 14″ x 8″ 18 kt. gold mantle clock with Arabic numerals, with a sterling silver Arabian horse with traditional Bahraini dress saddle that stands on a malachite base. Recd—November 3, 1999. Est. Value—$12000. Archives Foreign.	His Royal Highness Prince Bandar bin Sultan, Ambassador of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Hardcover book. ''Istanbul,'' $50. (2) 12″ silver coffee pot that sits on a 6″ diameter base, with inscription on base that reads ''As a memory of visiting Istanbul: Earl Cakir,'' $2500. Recd—November 17, 1999. Est. Value—$2550. Archives Foreign.	The Honorable Erol Cakir, Governor of Istanbul, The Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	15″ x 9″ ornately carved gold and silver religious icon in the shape of an altar with a picture of the Virgin Mary of Soumela in the center; mounted on an 18″ x 12″ velvet-covered board. Recd—November 22, 1999. Est. Value—$800. Archives Foreign.	The Honorable Dimitris L. Avramopoulos, The Mayor of Athens and Mrs. Avramopoulos, The Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) 14″ tall x 14″ wide x 6″ deep grey/green carved marble eagle, $1000. (2) 2.5″ diameter silver medallion that depicts a religious man with a beard, with writing around the rim, $50. Recd—November 22, 1999. Est. Value—$1050. Archives Foreign. (1) Videotape. ''Panorama,'' $15. (2) Hardcover book. ''120 Years National Assembly 1879–1999,'' by the National Assembly in Sofia, $25. Recd—November 22, 1999. Est. Value—$40. Archives Foreign..	The Honorable Yordon Sokolov, President, National Assembly, Republic of Bulgaria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	28″ x 23″ gilt and peach framed abstract oil painting that depicts a blue cup and a peach block in the lower corner on a navy background; sight size 19″ x 24″. Recd—November 22, 1999. Est. Value—$300. Archives Foreign.	His Excellency Petar Stoyanov, The President of the Republic of Bulgaria and Mrs. Stoyanova.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	(1) 31″ x 43″ oil painting on canvas titled ''The Well,'' in a 49.5″ x 38″ gilt frame. Piece depicts a stone well in a barren landscape of muted grey, blue, and green tones, $3500. (2) Silver medallion engraved with the image of a Ukrainian palace, $50. (3) 3″ x 1″ gold-plated sculpture in the shape of a wand and a crown, all of which sit on a green marble base, $40. (4) 8″ diameter green glass vase with blue, grey, red, and yellow circles and swirls, $250. Recd—December 8, 1999. Est. Value—$3840. Archives Foreign.	His Excellency Leonid Kuchma, President of Ukraine.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	(1) Bottle of Hetman vodka (2) Bottle of Ukrainian liquor. Recd—December 8, 1999. Est. Value—$65. Accepted by Another Government Agency..		
President	(1) Three ceramic coffee canisters, with gold-tone clasps, $60. (2) Small navy blue nylon backpack, $25. (3) Green apron with gold vertical stripes, $30. (4) Green pot holder with gold vertical stripes, $15. (5) Navy blue plastic tote bag with gold stars, $20. (6) Light brown ''Millennium Bear'' teddy bear, $50. (7) 18″ x 27″ braided wicker basket, $60. (8) 14″ oatmeal and brown Harrods teddy bear with a maroon fleece hat and scarf, $75. (9) 10″ brass and glass coffee pot, $60. (10) Silver corkscrew, $35. (11) Two 7″ silver candlesticks, $60. (12) 9″ crystal decanter with gold trim, $100. (13) Set of four crystal brandy glasses with gold trim, $200. (14) Silver gray ladle, $25. (15) 9″ silver platter, $50. (16) 8″ silver gravy boat, $40. (17) 8″ cream colored cake stand with a green and purple grape and leaf pattern, $75. Recd—December 16, 1999. Est. Value—$980. Archives Foreign.	His Majesty Sultan Haji Hassanal Bolkiah Mu' Izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Brunei Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Assorted wine, champagne, candles, and food products, all from Harrods. Recd—December 16, 1999. Est. Value—$1200. Accepted by Another Government Agency..		
President	Set of 14 kt. gold cuff links and tie clip that bear the seal of Finland. Recd—December 17, 1999. Est. Value—$575. Archives Foreign.	His Excellency Martti Ahtisaari, President of Finland.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Three 29″ diameter circular leather mats and one 11.5′ x 10′ leather floor covering. All items are primarily beige with green stripes and a red and white floral and heart pattern. The three round mats are embroidered to read ''Bill Clinton.'' Recd—December 18, 1999. Est. Value—$5000. Archives Foreign.	His Excellency Jibril Muhammad Aminu, Ambassador of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	10″ x 8″ gold and silver sculpture with a circular flat top lined with small animals and a carved object in the middle, on a blue-green marble/granite base. Recd—December 20, 1999. Est. Value—$1000. Archives Foreign.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	(1) Two 18 kt. gold rings attached to a pendant and cuff bracelet by two thin gold chains. All pieces are embedded with turquoise stones, $1800. (2) 12″ x 10″ green marble two-piece sculpture. The sphere has a metal ring that reads ''Cooperative Threat Reduction,'' which sits in a concave spot on the marble base, $150. (3) Set of 18 kt. gold rectangular cuff links with an intricately carved design on each, $225. Recd—December 20, 1999. Est. Value—$2175. Archives Foreign.	.....	
President	(1) Case of eight bottles of olive oil. (2) Two 10lb. bags of dates. Recd—December 29, 1999. Est. Value—$200. Accepted by Another Government Agency.	His Excellency Zine El-Abidine Ben Ali, The President of the Republic of Tunisia and Mrs. Ben Ali.	Non-acceptance would cause embarrasment to donor and U.S. Government.
	20″diameter x 15″ tall yellow and purple leather ottman storage box. Ottoman is hollow with lid. Inside the ottoman are two 14″diameter x 5″ tall purple and yellow leather trays. Recd—December 29, 1999. Est. Value—$350. Archives Foreign.	.....	
President and First Lady	(1) Silver brooch with clusters of pearls in the shape of a daisy, $185. (2) 2″ x 8″ x 10″ black lacquer box with gold wheat desing on the lid, $250. Recd—June 22, 1994. Est. Value—$435. Archives Foreign.	Their Imperial Majesties The Emperor and Empress of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	(1) 15″ tall porcelain figure of a woman dancer with long brown hair and a white hardened mesh dress standing on a rock surrounded by puffins, $350. (2) 9″ x 7″ gold-tone framed poem titled ''Dance In The Wind'' $25. (3) 6″ x 4″ white and blue porcelain stand that reads ''Dance In The Wind, Limited Edition No. 1, Presented to Hillary Clinton by the City of Limerick, Ireland, 5th of September 1998,'' $50. Recd—September 8, 1998. Est. Value—$425. Archives Foreign.	Mr. Joe Harrington Mayor of Limerick Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the President: 10″ tall off-white carved bone that depicts a warrior wearing a jaguar headdress; a lion's head protrudes from the top of the bone; sitting on a 3″ diameter wooden base, $200. For the First Lady: 1″ x 2″ gold filigree cross pendant, $250. Recd—February 14, 1999. Est. Value—$450. Archives Foreign.	The Honorable Licenciado Xavier Abreu Sierra, Presidente Municipal de Merida, Merida, Yucatan Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the President: Two volume and antique book set. ''The History of the Conquest of Mexico By the Spaniards,'' by Don Antonio de Solis, $400. For the First Lady: (1) Book. ''Rebuzus de la Collection,'' by Robert Everts, $50. (2) Traditional Mexican shawl, $150. Recd—February 15, 1999. Est. Value—$600. Archives Foreign.	His Excellency Ernesto Zedillo Ponce de Leon, President of the United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the President: 15″ x 20″ light yellow/brown traditional Ashanti stool with various shaped carvings, $500. For the First Lady: (1) Three 11″ x 13″ gilt framed and matted shadow boxes containing multicolored cotton traditional Ghanaian cloths, $375. (2) 23″ long yellow traditional Ghanaian beaded a necklace with blue, white, and red stripes, and two 1″ gold tube accents, with a matching bracelet, $100. (3) 18″ long 18 kt. gold link necklace with a 1″ pure gold nugget pendant, and a pair of matching 2″ dangling pierced earrings with .5″ pure gold nuggets at the ends, $1400. Recd—February 23, 1999. Est. Value—$2375. Archives Foreign.	His Excellency Flt. Lt. Jerry John Rawlings, (Ret.), The President of the Republic of Ghana and Mrs. Rawlings.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the President: 20″ x 13″ x 11″ wood lacquered humidor with two drawers, $650. For the First Lady: 1″ x 2″ x 14 kt. gold filigree leaf-shaped brooch, $300. Recd—March 10, 1999. Est. Value—$950. Archives Foreign.	His Excellency Arnoldo Aleman, The President of the Republic of Nicaragua and Mrs. Aleman.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	For the President: 23″ x 15″ black framed and matted pen sketch of a Warsaw city square; signed by the artist Solom Krosimy, $300. For the First Lady: 90″ x 16″ blue silk table runner with rust, pink, green, tan, and blue floral motif, gold backing, and silver fringe on both ends, $165. Recd—April 23, 1999. Est. Value—$465. Archives Foreign.	His Excellency Aleksander Kwasniewski, The President of the Republic of Poland and Mrs. Kwasniewski.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	(1) Hardcover book. ''Together Towards the New Century: Official Visit of Heydar Aliyev to the United States of America,'' $40. (2) Paperback. ''NATO and Azerbaijan,'' $10. (3) Silver and vermeil wine decanter ewer set with six cups and a platter. 13″ tall decanter has long spout and handle, with blue, white and green floral enamel motif. 3.5″ tall cups have engraved silver floral motif and sit on a gold stem. 16″ x 12″ platter has white, blue, and green floral enamel work on each scalloped end and a silver medallion in the center of the platter surrounded by a gold engraved background, $2500. (4) Silver and vermeil tea set with six settings and a black and white enamel floral motif; that includes 8.5″ tall teapot with gold spout, handle, and attached lid; 3″ diameter gold saucers; 1.5″ tall x 2.5″ diameter teacups; 3.5″ long spoons; 13″ diameter platter with silver rim, gold trimmed circle of black and white enamel work at the center, $3000. Recd—April 24, 1999. Est. Value—$5550. Archives Foreign.	His Excellency Heydar Aliyev, President of the Republic of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the First Lady: 4″ x 7″ round crystal bowl with geometric and vine motif, $350. For the President: 30″ x 34″ brown framed and double matted 22″ x 26″ print of a crane in red and black, titled ''Radiant Loon''; signed by the artist Kenojuak; numbered 15/50, $1000. Recd—April 24, 1999. Est. Value—$1350. Archives Foreign.	The Right Honorable Jean Chretien, P.C., M.P., The Prime Minister of Canada and Mrs. Chretien.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	For the First Lady: (1) 13″ x 9″ round silver vessel with a floral and bird relief. Vessel has a hinged lid with a gold spiral leaf finial, $1200. (2) 48″ x 96″ rust, orange, blue, and tan Vakko silk scarf with a geometric and floral motif, $150. (3) Two silver frames with a rope border, a name plate of donor, and the Turkish crest, each including photographs inscribed by the donor, $600. For the President: Large hardcover book ''Istanbul Capital of Empires,'' by Ertug, $200. Recd—April 24, 1999. Est. Value—$2150. Archives Foreign.	His Excellency Suleyman Demirel, The President of the Republic of Turkey and Mrs. Demirel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	(1) Six place settings, including a four piece silver flatware set with a symbol that depicts an eagle at the bottom of each piece, $3300. (2) 13″ brass Chillim pipe that has turquoise beads in a floral motif, $300. (3) 19″ long wooden flute with mother-of-pearl inlay floral design, $175. Recd—April 24, 1999. Est. Value—$3775. Archives Foreign.	His Excellency Islam Karimov, President of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the President: 9″ diameter bronze plate with silver overlay and crest in the center and an etched signature, $300. For the First Lady: 3″ x 3″ silver model of a domed church, $250. Recd—April 24, 1999. Est. Value—$550. Archives Foreign.	His Excellency Petar Stoyanov, The President of the Republic of Bulgaria and Mrs. Stoyanova.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	43″ x 30″ gilt framed pencil sketch of butterflies, pink roses, orchids, and seven face profiles with a 5″ x 3″ square cut out in the center of the piece with sketches of five additional profiles. Recd—April 28, 1999. Est. Value—$750. Archives Foreign.	His Excellency Vaclav Havel, President of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	(1) 4′ x 8′ red hand-woven wool rug with green, black, blue, and yellow vertical stripes, $800. (2) 4′ x 3′ black wood framed painting titled ''Spring/Winter,'' that is divided into two halves, one half has blue paint splatters and a blue horizontal stripe, other half has yellow paint splatters and a yellow horizontal stripe, $1200. (3) 72″ x 28″ rust and mustard colored silk shawl with a gold braided border and nine embroidered flowers with stems standing vertically from the base, $400. Recd—May 18, 1999. Est. Value—$2400. Archives Foreign.	Their Majesties King Abdullah II and Queen Rania al Abdullah, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	For the First Lady: 16″ long Gilbert Albert black leather necklace with silver pendant that depicts three conch shells with a pink pearl in the center, $450. For the President: 10″ dark wood Gilbert Albert letter opener with two silver conch shells and one small pink pearl on the end, $300. Recd—June 16, 1999. Est. Value—$750. Archives Foreign.	The Honorable Pierre Muller, Mayor of Geneva, Switzerland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the President: 9″ square wooden Hermes picture frame with burgundy leather hinge that opens to display two 4.5″ square pictures, $200. For the First Lady: 18 kt. gold Claude Lalanne floral brooch depicting a dogwood blossom, $750. Recd—June 17, 1999. Est. Value—$950. Archives Foreign.	His Excellency Jacques Chirac, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the President: Silver-plated Waterman ''Night and Day'' fountain pen that has silver and black horizontal stripes and black tips, $345. For the First Lady: 9.5″ tall x 4″ diameter cobalt blue porcelain vase with gilt fleur-de-lis accents and gilt rim, $300. Recd—June 17, 1999. Est. Value—$645. Archives Foreign.	His Excellency Lionel Jospin, The Prime Minister of the French Republic and Mrs. Jospin.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	10″ tall white cloisonne vase with gold trim and adorned with green, blue, and pink flowers, that sits on a silver base. Recd—July 3, 1999. Est. Value—$300. Archives Foreign.	His Excellency Kim Dae-jung, The President of the Republic of Korea and Mrs. Kim.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	(1) 11″ tall black hand-woven handbag with a pink, yellow, and green floral motif with drawstring closure and a woven shoulder strap, $50. (2) 100″ x 95″ ornate white hand-woven hammock with braided fringe and a peacock motif on the edges, $450. Recd—September 21, 1999. Est. Value—$500. Archives Foreign.	His Excellency Andres Pastrana, The President of the Republic of Colombia and Mrs. Pastrana.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	(1) 15″ x 22″ mother-of-pearl and abalone shadow box Nativity scene that reads ''Bethlehem 2000″ across the front, $1000. (2) 16″ 18kt. gold hourglass link necklace with hexagonal diamond pendant with a blue sapphire in lower center, $5000. Recd—September 23, 1999. Est. Value—$6000. Archives Foreign.	Mr. Yasser Arafat, Chairman, Executive Committee of the Palestine Liberation Organization.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	23″ tall ceramic vase in blue, green, white, and gold pattern with gold around the rim and base. Recd—October 12, 1999. Est. Value—$300. Archives Foreign.	Their Majesties King Abdullah II and Queen Rania al Abdullah, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	46″ x 29″ tile mosaic depicting the Church of St. Stephen on a beige background with yellow, rust, black, and brown. Recd—October 12, 1999. Est. Value—$3500. Archives Foreign.		
President and First Lady	For the President: 53″ x 41″ gilt wood framed and matted dot painting of the President wearing a black suit and a red and blue striped tie with a red and yellow background; sight size 36″ x 25″, $100. For the First Lady: Two traditional Nigerian silk outfits, each includes a mesh silk shirt and three wraps. One wrap measures 88″ x 50″, one measures 44″ x 27″, and the other measures 21″ x 74″. The first outfit is beige with gold and blue weaving, blue vertical stripes, and gold diagonal stripes with gold fringe, $360. The second outfit is silk with gold and brown weaving, pink and gold flowers, brown, gold, and red horizontal stripes and gold fringe, $310. Recd—October 28, 1999. Est. Value—$770. Archives Foreign.	His Excellency Olusegun Obasanjo, The President of the Federal Republic of Nigeria and Mrs. Obasanjo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	(1) Two 42″ x 91″ and 42″ x 150″ black, rust, and cream silk sarees with an exotic print, $300. (2) 24″ square wood framed 3-dimensional wood carving that depicts a female Hindu Goddess playing a sitar in a forest setting, $1000. (3) 11″ diameter orange alabaster bowl with silver banding on the outside rim that sits on a wooden base, $600. Recd—November 12, 1999. Est. Value—$1900. Archives Foreign.	His Excellency Abdurrahman Wahid, The President of the Republic of Indonesia and Mrs. Wahid.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the First Lady: 12″ x 9″ silver oval hanging mirror with silver chain, scalloped edges and raised heart motif on the back, $700. For the President: White album of photographs commemorating the President and First Lady's State Visit to Ankara, Turkey, $50. Recd—November 15, 1999. Est. Value—$750. Archives Foreign.	His Excellency Suleyman Demirel, The President of the Republic of Turkey and Mrs. Demirel.	Non-acceptance would causeembarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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President and First Lady	(1) 18 kt. gold brooch with grape leaf motif that reads ''2000,'' $450. (2) Three butterfly pins, one large silver, one medium gold, and one small silver, $250. (3) Paperback. ''Tsitouras: Discover the Tsitouras Collection 1999,'' $15. (4) Pair of 18″ tall ornately engraved silver candlesticks on a tripodial base with clawed feet, $8000. Recd—November 17, 1999. Est. Value—$8715. Archives Foreign. 21″ x 15″ unframed religious paper with four gold leaf squares of Jesus at various stages in his life and Turkish writings in the background. Recd—November 17, 1999. Est. Value—$800. Archives Foreign. Two paperbacks. ''Conversations With Ecumenical Patriarch Bartholomew I,'' by Oliver Clement, and ''The Orthodox Church and the Environment,'' by Athena Schina. Recd—November 17, 1999. Est. Value—$35. Archives Foreign.	His All Holiness Bartholomew Archbishop of Constantinople, New Rome and Ecumenical Patriarch.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the President: (1) Paperback. ''Coins and Numismatics,'' published by the Hellenic Ministry of Culture and the Numismatic Museum, $25. (2) Three laminated pamphlets. ''Archaic Horsemen of the Acropolis,'' $5. (3) Large hardcover book about ancient artifacts, written in Greek, $75. For the First Lady: Hardcover book. ''Greek Jewellery[sic]: 6,000 Years of Tradition,'' published by The Archaeological Receipts Fund, $50. Recd—November 19, 1999. Est. Value—$155. Archives Foreign. For the President: (1) Four ancient silver Greek coins, $200. (2) 7″ tall composition replica bust of a young boy titled ''The Head of Eros,'' on a 3″ square wooden base, $50. (3) Paperback. ''The Monuments of the Acropolis,'' by Maria Brouskari, $20. For the First Lady: Gold-plated eight-petaled rosette brooch, $65. Recd—November 19, 1999. Est. Value—$335. Archives Foreign.	Her Excellency Elisavet Papazoi, Minister of Culture of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	For the First Lady: 8″ x 6″ silver Hellenistic Water-Jug pitcher with scrolled handle and spout that resembles a leather sac, $1200. For the President and First Lady: (1) Hardcover book. ''The Olympic Games in Ancient Greece,'' edited by Nicolaos Yalouris, $40. (2) 24″ x 11″ x 1″ off-white ceramic reproduction of an ancient relief that depicts two youths playing hockey with four onlookers, $175. Recd—November 20, 1999. Est. Value—$1415. Archives Foreign.	His Excellency Constantine Simitis, The Prime Minister of the Hellenic Republic and Mrs. Simitis.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	For the First Family: (1) 66″ x 65″ cherry wood framed and matted color sketch of the First Family at the Great Wall of China, $4000. (2) Hardcover book. ''The Life and Works of Wang Yingchun and Yang Lizhou,'' $30. For the First Lady: Four silk shirts, one short sleeve with green and white stripes, two short sleeve with tan and white stripes, and one tan long sleeve, $160. Recd—April 8, 1999. Est. Value—$4190. Archives Foreign.	His Excellency Zhu Rongji, The Premier of the State Council of the People's Republic of China and Madame Lao.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	For the President: Paperback. ''The Exhibition of Hohrin Fukuoji,'' $100. For the First Lady: (1) 12″ x 9″ black lacquer letter box with gold and pink flowers painted on lid, $600. (2) 76″ x 16″ silk shawl, half black, half white, with a silk rose and leaf on each end, $200. (3) 21″ x 18″ silver blue framed and matted Japanese poem written in charcoal, made by Mrs. Obuchi, $500. For Chelsea Clinton: 5″ x 4″ brass Mikimoto frame inlaid with lapis and two cultured pearls, $300. Recd—May 3, 1999. Est. Value—$1700. Archives Foreign.	His Excellency Keizo Obuchi, The Prime Minister of Japan and Mrs. Obuchi.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	(1) 25″ x 18″ framed impression of 200 nails on white flat paper, enclosed in a 33″ x 27″ plexiglass case; signed by artist Ueker, $2500. (2) Large hardcover book. ''Ueker,'' inscribed by artist, $30. (3) Two 80″ x 30″ black cashmere Jil Sander scarves, $1000. Recd—June 16, 1999. Est. Value—$3530. Archives Foreign.	His Excellency Gerhard Schroeder, The Chancellor of the Federal Republic of Germany and Mrs Schroeder.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Family	For the President and First Lady: Set of 12 handblown clear crystal wine glasses by Oskar Kogoj, each with unique colored stem design. Three 6″ tall, six 8″ tall, and three 10″ tall. Five of the glasses have a flared cone base, $600. For the President: Hardcover book. ''Ljubljana: A Pictorial Chronicle of a Capital City,'' by Marko Habic, $40. For the First Lady: (1) Hardcover book. ''Nature Design,'' written and inscribed by Oskar Kogoj, $40. (2) Hardcover book. ''Ljubljana: City of Culture,'' by Bojana Leskovar, $20. For Chelsea Clinton: Hardcover book. Recd—June 21, 1999. Est. Value—$740. Archives Foreign.	The Honorable Viktorija Potocnik, Mayor of Ljubljana Slovenia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	For the President: (1) 14″ x 10″ reproduction of the first Slovenian Bible, circa 1584, with brown leather cover. The Bible is stored in a 15″ x 12″ engraved wooden box, $250. For the First Lady: 16″ x 42″ cream colored intricately woven doily table runner with scalloped edges, $100. For the President and First Lady: Two brown leather photo albums commemorating the President and First Lady's trip to Slovenia, June 1999, $150. For Chelsea Clinton: (1) Hardcover book. ''Slovenske Krajine,'' by Dusan Ogrin; inscribed by Ana and Spela Kucan, $30. (2) Paperback, ''Krajine/Landscapes,'' written and inscribed by Ana Kucan, $20. (3) Small silver dove pendant on a silver chain, $50. Recd—June 22, 1999. Est. Value—$600. Archives Foreign.	His Excellency Milan Kucan, The President of the Republic of Solvenia and Mrs. Kucan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	For the President: (1) Black and green wool and viscose baseball cap that reads ''Ireland,'' $20. (2) Grey, blue, and black wool fisherman's sweater, $85. (3) Pair of 18 kt. gold Cartier cuff links in the shape of a car's head with emerald eyes and onyx nose, $1500. For the First Lady: Pair of Saks Fifth Avenue 18kt. white gold loop earrings encircled with gold and diamonds, $4000. For Chelsea Clinton: 18kt. gold Tiffany & Co. charm bracelet with five charms depicting starfish and hearts, $1200. Reed—July 5, 1999. Est. Value—$6805. Archives Foreign.	His Excellency Nawaz Sharif, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Family	For Chelsea Clinton: (1) 16″ sliver red carnelian beaded necklace with eight carved seals and a flat oval red stone pendant, $400. (2) 70″ square purple, blue, and fuchsia silk scarf with a white circular pattern, $100. (3) 7″ purple satin purse with purple fringe and metal sequins, $30. For the First Lady: (1) 54″ x 16″ hand printed gold, orange, blue, turquoise, and black silk scarf, $60. (2) 3″ silver brooch with a 1″ lapis stone and a small red coral stone, $200. (3) 16″ carved silver serving tray with handles; attached to tray by a ribbon are 10 embroidered napkins, $550. For the President: (1) 9″ diameter scalloped silver serving bowl and lid with carved silver flower finial, $450. (2) 4″ tall scalloped silver creamer with handle and matching 6″ diameter drip plate, $450. (3) 54″ x 60″ red, blue, green, gold, black, and orange handwoven Anatolian wool rug with braided fringe, $2000. (4) Two large hardcover copies of the book ''Anatolian Carpet,'' $50. (5) Leather-bound book. ''Architecture of the Ottoman Empire,'' $375. (6) Paperback. ''Turkish Handwoven Carpets,'' $50. Recd—September 28, 1999. Est. Value—$4715. Archives Foreign.	His Excellency Bulent Ecevit, Prime Minister of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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First Family	For Chelsea Clinton: Silver five piece mirror/hairbrush set with raised floral pattern. Set includes a 9.5″ handheld mirror, a 7″ comb, a 9″ oval brush with handle, a 7″ oval lint brush, and a 3″ powder box with lid, $1200. For the First Lady: Large silk-covered book. ''Silks for the Sultans,'' by Ahmet Ertug, $150. For the President: (1) Large fabric-covered book. ''In Pursuit of Excellence,'' by Ahmet Ertug, $125. (2) Set of seven commemorative Turkish coins, one 25 lira gold, and six 3,000,000 lira silver. All read ''75 C 1923–1998,'' $300. (3) Turkish State Award. Award consists of (a) White enamel and gold trimmed starburst medallion that hangs from a white eagle and olive branches, attached to a red and white striped ribbon. (b) Black leather and velvet portfolio that contains a certificate signed by President Demirel, $500. Recd—November 15, 1999. Est. Value—$2275. Archives Foreign.	His Excellency Suleyman Demirel, The President of the Republic of Turkey and Mrs. Demirel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	5.5″ long antique silver floral-motif handheld mirror, with six small lapis stones embedded on the front and one larger lapis stone embedded on the back, $200 (2) 16″ x 5″ x 9.5″ light green wooden box with gilt square accents on the top, each square painted with moon and berry designs; lined with tan velvet, $75. Recd—November 15, 1999. Est. Value—$275. Archives Foreign.	His Excellency Bulent Ecevit, Prime Minister of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	(1) 10″ square silk handkerchief trimmed with blue handstitched lace, $50. (2) Handmade 10″ long fork and spoon set made of black horn, inlaid with two stripes of bone and silver on the handles and dots on the tips, $40. (3) 67″ x 17″ handwoven white silk shawl with gold thread floral pattern and white silk fringe on each end, $175. Recd—November 15, 1999. Est. Value—$265. Archives Foreign.	His Excellency Bulent Ecevit, Prime Minister of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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First Family	(1) 40″ x 40″ hand-embroidered linen tablecloth with an embroidered floral design in each of the corners and a 1″ gold colored lace doiley trimming the edges, $175. (2) Three hardcover copies of ''Ataturk's Izmir Days,'' complied by Izmir Valiligi, $150. (3) 42″ x 70″ dark multi-colored burlap kilim with fringed ends, displaying a Turkish design of different abstract shapes, $450. For Chelsea Clinton: 9″ x 9″ black velvet handmade Turkish drawstring handbag with a 3″ diameter gold and silver embroidered emblem and a thin rope shoulder strap, $50. Recd—November 16, 1999. Est. Value—$825. Archives Foreign.	The Honorable Kemal Nehrozoglu, Governor of the Province Izmir.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	For the First Lady: 18kt. gold bangle bracelet with a lion head on each end, $1200. For Chelsea Clinton: 7″ silver necklace with a 1″ round sodalite pendant, $225. For the President: (1) 9″ diameter x 1.5″ deep silver bowl engraved with a signature and the seal of Greece, $1000. (2) Two. 4.5″ tall hand-hammered silver cups with raised olive branch relieve under the rim. Each cup is 5″ in diameter and sits on a pedestal base, $3,000. Recd—November 19, 1999. Est. Value—$5425; Archives Foreign.	His Excellency Constantinos Stephanopoulos, President of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	26″ x 26″ gilt framed and white matted oil portrait of a man wearing a maroon and brown coat, by Carmelo de Arzadun. Recd—October 4, 1998. Est. Value—$3000. Archives Foreign.	His Excellency Dr. Julio Maria Sanguinetti, President of the Oriental Republic of Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	(1) Two 4″ tall six-sided pots, $40. (2) Two 2″ tall six-sided cache pots, $20. (3) 5″ tall x 10″ diameter red metal bowl with gold trim, $20. (4) 8″ tall x 13″ diameter wooden box covered with blue and multicolored cotton fabric, $10. Recd—February 19, 1999. Est. Value—$90. Archives Foreign.	His Excellency Jacques Chirac, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	73″ x 18″ grey silk and rayon scarf with a striped and floral pattern. Recd—March 17, 1999. Est. Value—$245. Archives Foreign.	His Excellency Bertie Ahern, Prime Minister of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	2″ x 3″ 18 kt. gold florentine scarab pendant with blue inlay accents. Recd—March 24, 1999. Est. Value—$1200. Archives Foreign.	General Selmy Selim, President of Supreme Council, Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	25″ tall cream Egyptian alabaster vase inlaid with turquoise, lapis, and limestone banding. Recd—March 24, 1999. Est. Value—$1200. Archives Foreign.		
First Lady	39″ diameter mosaic that depicts a man wearing a fruit and leaf crown, with a 7″ wide border that depicts fruit and leaves. Recd—March 26, 1999. Est. Value—$2500. Archives Foreign.	The Honorable Muhammid El Hashim Guedria, Governor of Mahidia, The Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	26″ coral graduated bead necklace with a 7″ matching bracelet and 2″ tear-drop clip-on earrings. Recd—March 31, 1999. Est. Value—$1500. Archives Foreign.	Mrs. Leila Ben Ali, Office of the President of the Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	48″ square red and white silk Hermes scarf, permanently creased accordion style. Recd—April 23, 1999. Est. Value—$175. Archives Foreign.	His Excellency Jacques Chirac, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	25″ x 32″ gilt floral framed and matted cotton pastel drawing that is predominantly pink, white, blue, yellow, and black and depicts a woman walking away from a man; titled ''Street Scene in Rome'', by Zurab NizRaradze. Recd—April 24, 1999. Est. Value—$400. Archives Foreign.	His Excellency Eduard Shevardnadze, President of Georgia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	12″ x 8″ white Herend porcelain serving bowl bordered in mint green and gold with yellow and green flowers and butterfly motif. Recd—May 3, 1999. Est. Value—$450. Archives Foreign.	His Excellency Viktor Orban, The Prime Minister of the Republic of Hungary and Mrs. Orban.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	(1) 80″ x 20″ orange silk shawl with red and gold embroidered paisley design and orange tassles on both ends, $400, (2) 54″ long purple silk dress with purple and gold embroidered flowers and multicolored applique on the sleeves, neck, and sides, $600. Recd—May 18, 1999. Est. Value—$1000. Archives Foreign.	His Excellency Abdul Kareem Kabariti, The Chief of the Royal Court and Mrs. Kabariti, Amman, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	(1) 12″ x 7″ white Herend porcelain urn with gilt trim, pink and green flowers and butterfly motif, and matching lid with yellow rose finial, $1400. (2) 22″ x 11″ green velour table runner with gold trim and a 5″ diameter needle-pointed rose in the center, $100. Recd—June 8, 1999. Est. Value—$1500. Archives Foreign.	His Excellency Arpad Goncz, The President of the Republic of Hungary and Mrs. Goncz.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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First Lady	(1) 26″ x 9″ x 9″ carved red wooden statue depicting a woman carrying a baby in her arms and a bowl of fruit on her head, $475. (2) 20″ silver beaded necklace with amber stones, $40. (3) 25″ necklace with rust color seed beads, $65. (3) 9″ irregularly shaped box covered in pink leather, $10. (4) 6′ square cotton/linen blend blanket with white stitching, $75. Recd—June 11, 1999. Est. Value—$665. Archives Foreign.	Mrs. Marguerite Kerekou, First Lady of Benin.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	34″ tall silver-plated samovar with black wood finial lid, two wood side handles, and floral relief. Recd—June 23, 1999. Est. Value—$1300. Archives Foreign.	Maitre Mohamed Debbagh, President of the Municipal Council Fez, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	(1) 30″ ornate gold and silver vermeil belt with an ornate buckle depicting St. George and the Dragon, $1200. (2) 10″ tall silver pitcher with large spout, pedestal base, and curled handle, $1200. Recd—June 23, 1999. Est. Value—$2400. Archives Foreign.	The Honorable Leoluca Orlando, Mayor of Palermo, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	2″ silver brooch with an oval mother-of-pearl center. Recd—June 24, 1999. Est. Value—$135. Archives Foreign.	His Excellency Ljubco Georgievski, The Prime Minister of the Former Yugoslav Republic of Macedonia and Mrs. Georgievska.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Two 14″ x 12″ 18 kt. gold and platinum picture frames with filigree motif and set with amethyst, topaz, garnet, jade, and acquamarine stones. Each hold an 8″ x 10″ photograph. One photograph is of the First Lady and the former King of Morocco. The other is of the former King of Morocco, the First Lady, and Chelsea Clinton walking. Both are inscribed by the former King. Recd—September 7, 1999. Est. Value—$15000. Archives Foreign.	His Majesty Mohamed VI, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	21″ Benin gilt bronze head of a woman with rings around her neck, on a 4″ green stand. Recd—September 16, 1999. Est. Value—$1000. Archives Foreign.	Mrs. Stella Obasanjo, First Lady of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	(1) 19.5″ silver square link necklace with yellow amber stones. (2) ¾″ silver square shaped earrings with yellow amber stones. (3) 8″ silver square link bracelet with yellow amber stones. Recd—October 6, 1999. Est. Value—$350. Archives Foreign.	His Excellency Bronislaw Geremek, Minister of Foreign Affairs of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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First Lady	(1) 5″ bronze statue of a man on a 1.5″ black marble stand, by Zofia Wolslka, $3000. (2) Silver medallion depicting the profile of Fryderyk Chopin and his signature, $35. (3) Compact disc. ''Chopin Year 1999,'' $15. (4) Hardcover book. ''Spotkania z Chopinem,'' by Edward Hartwig, $45. Recd—October 6, 1999. Est. Value—$3095. Archives Foreign.	His Excellency Aleksander Kwasniewski, President of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	(1) Hardcover book. ''Slovensko v Obrazoch,'' by Remedium, $50. (2) Hardcover book. ''Slovakia,'' compiled by Eugen Lazistan, $25. (3) Silver medallion that depicts a castle and reads ''Prezidentsky Palac v Bratislve,'' $35. (4) 3″ antique pottery oil lamp, $75. (5) 4″ antique pottery jug, $100. (6) 3″ antique pottery oil lamp, $75. Items 4–6 are contained on an 11″ x 6″ wooden stand with a gold-tone plaque that reads ''Roman Period 63 B.C.E. 330 C.E'' with a plastic lid. (7) 24″ x 24″ handwoven cream colored fiber wall hanging with floral design in a gold-tone wooden loom, $150. (8) 27″ x 20″ brightly colored oil painting on canvas that depicts a farm scene with people working, $350. (9) Blue glass tea set with hand-painted pink, yellow, and blue flowers and 24 kt. gold accents. Set includes a teapot, cream pitcher, sugar dish, six teacups, and six saucers, $600. Recd—October 6, 1999. Est. Value—$1460. Archives Foreign.	His Excellency Rudolf Schuster, The President of the Slovak Republic and Mrs. Schusterova.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	4″ blue, gold, white, orange, and yellow kelandic glass figure on a 3″ clear glass stand that reads ''Forseti Islands.'' Recd—October 8, 1999. Est. Value—$300. Archives Foreign.	His Excellency Olafur Ragnar Grimsson, President of the Republic of Iceland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	10″ cut crystal table Valaska Bela basket with a snowflake motif. Recd—October 9, 1999. Est. Value—$300. Archives Foreign.	His Excellency Eduard Kukan, Minister of Foreign Affairs of the Slovak Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Black onyx bead necklace with a pendant of four 14 kt. gold frogs and a pair of matching earrings. Recd—October 19, 1999. Est. Value—$1200. Archives Foreign.	Her Excellency Mireya Moscoso, President of the Republic of Panama.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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First Lady	Two ornate brass lamps, 58″ in height and 27″ in diameter. Lamps have rectangular glass panels with hinge doors that open and have eight sockets inside, on a brass stand. Lamps are an arabesque, traditional Middle Eastern pattern. Recd—October 26, 1999. Est. Value—$6000. Archives Foreign.	His Majesty Mohamed VI, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	(1) 18 kt. white gold and diamond 16″ necklace with center pendant of seven diamonds, $8500. (2) Pair of open-work 18 kt. white gold and diamond clip-on earrings, $1200. Recd—November 17, 1999. Est. Value—$9700. Archives Foreign. (1) 13″ x 13″ x 2″ beige ceramic dish with four trees etched in the center in a darker beige tone, $150. (2) 16″ x 12″ red leather book of photographs commemorating the First Lady's visit to Jordan, $225. (3) 76″ x 48″ cream colored woven rug with three brown, green, and gold trees and cream colored fringe at each end, $675. Recd—November 17, 1999. Est. Value—$1050. Archives Foreign.	Their Majesties King Abdullah II and Queen Rania al Abdullah, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	80″ x 36″ blue, red, green, black, and white patterned handwoven Turkish rug with cream colored fringe. Recd—November 18, 1999. Est. Value—$600. Archives Foreign. 40″ x 17″ cream colored silk table runner with blue, pink, gold, and green floral embroidery on the ends and silver sequins along the edges. Recd—November 18, 1999. Est. Value—$75. Archives Foreign.	The Honorable Ertugrul Dokuzoglu, Governor of the Province of Antalya, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	10″ white, blue, and gold-tone porcelain urn with silver overlay, hearts, and jewelled insets. Recd—November 18, 1999. Est. Value—$850. Archives Foreign.	The Honorable Bekir Kumbul, Mayor of Antalya, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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First Lady	Six Coroc Studio purses. (1) 7″ x 13″ purple alligator pattern velvet handbag with two purple leather handles, $125. (2) 10″ x 12″ black leather shoulder bag with three divided compartments and two shoulder straps, $300. (3) 8″ x 14″ metallic grey leather purse with two shoulder straps and snap closure, $225. (4) 11″ x 12″ metallic blue handbag with two clear plastic handles, $250. (5) 12″ x 14″ soft brown alligator pattern leather drawstring shoulder bag, with one strap and silver accents, $200. (6) 6″ x 10″ red alligator pattern velvet handbag, with a front spin clasp and matching adjustable strap, $150. Recd—November 24, 1999. Est. Value—$1250. Archives Foreign.	His Excellency Abdelsam Jaidi, Consul General of the Kingdom of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady and Chelsea	For the First Lady: (1) Paperback. ''Silent Images: Women in Pharaonic Egypt,'' by Zahi Hawass, $10. (2) 49″ x 39″ multicolored wool rug that depicts an Egyptian market with four men trading pottery, $350. For Chelsea Clinton: 2″ x .5″ silver brooch that depicts a pueblo style house and wheel, set with turquoise and amethyst, $150. Recd—March 23, 1999. Est. Value—$510. Archives Foreign.	Mrs. Suzanne Mubarak, Ittihadiya Palace, Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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First Lady and Chelsea	For the First Lady: Set of blue glass containers with silver filigree accents. (1) 5″ x 8″ round chalice with silver filigree base, $100. (2) 8″ round container with silver filigree top, $100. (3) 13″ x 7″ vase with silver filigree top, $150. (4) 13″ x 4″ oil lamp with silver filigree, $125. (5) 13″ x 3″ decorative oil lamp with silver filigree handle, $125. (6) 3″ x 2″ amphora-shaped black, blue, and yellow glass vessel, $25. (7) 5″ x 4″ silver plaque that reads ''Presented to Mrs. Hillary Clinton By The Town Hall of Ariana Tunisia,'' $75. (8) Black carved rose on a silver stem with silver leaves, $150. (9) 22″ x 60″ orange scarf with foil stitching, $50. For Chelsea Clinton: Set of blue glass items with silver filigree accents. (1) 7″ x 2″ pair of slippers with silver fish motif on the toe, heal, and strap, $200. (2) Four blue and black painted pottery beads, each smaller than an inch, $40. (3) 4″ x 5″ silver plaque that reads ''Presented to Ms. Chelsea Clinton By The Town Hall of Ariana Tunisia,'' $75. (4) 5″ x 3″ cylinder container with silver top, $100. Recd—March 25, 1999. Est. Value—$1315. Archives Foreign.	Her Excellency Faiza Kefi, Minister of Environment and Land Development of the Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady and Chelsea	For the First Lady: Two black ceramic bottles with swirl wirework motif silver finials, and silver pedestal base. One is wide and 9″ tall, the other is thin and 17″ tall, $800. For Chelsea Clinton: 13″ x 9″ silver filigree two-sided oval dressing mirror on two column supports with covered jar on base, mounted on four feet, $650. Recd—March 28, 1999. Est. Value—$1450. Archives Foreign.	His Excellency Zine El-Abidine Ben Ali, The President of the Republic of Tunisia and Mrs. Ben Ali.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady and Chelsea	For the First Lady: (1) 12″ x 6″ x 5″ wood lockable jewelry box with raised hinged lid, $200. (2) 26″ irregular amber bead necklace. Salmon colored stone beads on metal loops separate some beads, $100. For Chelsea Clinton: (1) 10″ x 6″ x 4″ wooden jewelry box, $100. (2) 28″ link necklace of round medallions connected by silver rings with red and blue bead accents, $100. Recd—March 31, 1999. Est. Value—$500. Archives Foreign.	The Honorable Moulay Mustapha Ait Mauma, Governor of Errachidia, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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First Lady and Chelsea	(1) Gold-tone leather purse with two strap handles, $200. (2) Dark green silk caftan with green embroidery on the sleeves and collar, $300. (3) Black velvet caftan with gold-tone braiding at collar and shoulders, $300. (4) Two velvet capes, one blue/grey and one light blue, each with a hood lined with a gold-tone braid trim and tassels, $600. (5) Blue, green, yellow, and gold-tone silk caftan with gold-tone, blue, and green brocade down the center and matching sheer silk liner, $400. (6) Red and gold-tone polka-dot silk caftan with gold-tone and red brocade braid down the center and matching sheer silk liner, $350. (7) Two gold-tone brocade belts, $150. Recd—April 1, 1999. Est. Value—$2300. Archives Foreign.	His Majesty Hassan II, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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	(1) Three layered green organza and silk caftans with gold-tone embroidery, $350. (2) Silver-tone leather purse, $150. (3) 18 kt. gold overlay, silver, and green enamel horn-shaped evening purse with gold chain. Lid is set with 64 diamonds, and below the lid are seven garnets. Inside lid is a mirror surrounded by four more garnets, $20000. (4) Two 60″ x 60″ velvet blankets. One is red with gold-tone and red fringe. The other is blue with blue and gold-tone fringe tassels, and braid, $500. (5) Maroon velvet hooded cape with a gold-tone braid trim and tassels, $300. (6) Blue silk polka-dot caftan with blue, black, and gold-tone center brocade braid, $500. (7) Green and white floral silk caftan with green white, and gold-tone center brocade, $500. (8) Grey, silver-tone, and black diamond patterned silk caftan with gold-tone and silver-tone center brocade, $350. (9) Green sheer silk with a gold-tone, purple, white, and yellow floral design, with white, green and gold-tone braid accents, $350. (10) Sky blue silk satin caftan with white floral motif with blue, white and gold-tone center brocade, $350. Items 6–10 each have matching silk liners. (11) Blue and silver-tone silk caftan with silver-tone sequins and a blue, grey and gold-tone center brocade, $300. (12) Blue, white, and black silk caftan with silver-tone bars and blue, grey, and gold-tone brocade accents, $350. (13) Two brown leather suitcases, $700. (14) Four gold-tone brocade belts, $300. Recd—April 1, 1999. Est. Value—$25000. Archives Foreign.		
First Lady and Chelsea	(1) Large fabric-covered book. ''The Splendour of Islamic Calligraphy,'' by Abdelkebir Khatibi, $60. (2) Large hardcover book. ''The Hassan II Mosque,'' Mohammed-Allal Sinaceur, $60. (3) 11″ x 4″ x 7″ burlwood jewelry box with locking lid and two sectional interior, $250. (4) 6″ tall x 4.5″ diameter amber vessel with pointed lid. Both parts are decorated with silver accent overlays, $300. Recd—April 1, 1999. Est. Value—$670. Archives Foreign.	His Excellency Abderrahmane Youssoufi, Prime Minister of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady and Chelsea	For the First Lady: Gold brooch in the shape of four tulips, $250. For Chelsea Clinton: 4″ swan-like turquoise stone paperweight that is also a letter opener, $50. Recd—July 16, 1999. Est. Value—$300. Archives Foreign.	His Excellency Ehud Barak, The Prime Minister of Israel and Mrs. Barak.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady and Chelsea	For Chelsea Clinton: 15.5″ blue topaz beaded necklace with a 22kt. gold double floral clasp, $450. For the First Lady: (1) 16″ cut carnelian beaded triple strand necklace with a 22kt. gold clasp, $450. (2) .5″ 22 kt. gold and cabochon carnelian circular earrings, $300. Recd—November 9, 1999. Est. Value—$1200. Archives Foreign.	Mrs. Nava Barak, Israel	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady and Chelsea	For Chelsea Clinton: Steel Sector watch with a black face and a gold-tone crown on the face, $150. For the First Lady: 7″ silver and gold camel with a silver and gold military figure riding the camel that sits on a 1.5″ marble stand, $4500. Recd—November 17, 1999. Est. Value—$4650. Archives Foreign.	Their Majesties King Abdullah II and Queen Rania al Abdullah, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady and Chelsea	For the First Lady: (1) 2″ 18 kt. gold brooch in the shape of a half man, half bird, $400. (2) 34″ x 34″ blue, white, yellow, and red Vakko silk scarf with a floral and striped pattern, $65. For Chelsea Clinton: (1) 16″ silver link necklace with a flower pendant, $175. (2) 25″ x 25″ blue, green, yellow, and white Vakko silk scarf with an astrological sign pattern, $50. Recd—November 18, 1999. Est. Value—$690. Archives Foreign.	The Honorable Istemihan Talay, The Minister of Culture, Republic of Turkey and Mrs. Talay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and Chelsea	For the President (1) Black cotton/poly rugby jersey that reads ''New Zealand All Blacks,'' $50. (2) 18″ tapered black and chartreuse art-glass vase, $140. For Chelsea Clinton: (1) Four compact discs. ''Te Papa Suite'' performed and recorded by Gareth Farr and the New Zealand Symphony Orchestra, ''Stellar,'' by Tom Bailey and Stellar, ''The Best of Crowded House,'' by Crowded House, and ''The Mutton Birds,'' by the Mutton Birds, $60. (2) Small black cotton/poly rugby jersey that reads ''New Zealand all Blacks,'' $50. Recd—September 13, 1999. Est. Value—$300. Archives Foreign.	The Right Honorable Jenny Shipley, P.C., The Prime Minister of New Zealand and Mr. Shipley.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Chelsea	Black brushed fabric cape with hood that has silver embroidery. Recd—March 27, 1999. Est. Value—$300. Archives Foreign.	Mrs. Leila Ben Ali, Office of the President of the Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Chelsea	7″ long x .5″ wide yellow and white gold and diamond bracelet. Recd—November 17, 1999. Est. Value—$2500. Archives Foreign.	Their Majesties King Abdullah II and Queen Rania al Abdullah, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Chelsea	(1) Gold-tone scarf ring in the shape of a flower with a pearl in the center, $10. (2) 60″ x 23″ orange, yellow, red, blue, and tan Vakko silk scarf with Arabic motif, $90. Recd—November 18, 1999. Est. Value—$100. Archives Foreign.	The Honorable Bekir Kumbul, Mayor of Antalya, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Carlos E. Pascual, Director, NSC Russia/Ukraine/Eurasian Affairs.	Three gold coins: 200 som, 20 som, and 1 som in a green velvet box. Recd—March 17, 1999. Est. Value—$1000. General Services Administration.	His Excellency Abdulazziz Kamilov, Minister of Foreign Affairs of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Samuel Berger, Assistant to the President for National Security Affairs.	6″ diameter silver dish with gold plated medallion in the center. Recd—May 27, 1999. Est. Value—$350. General Services Administration.	His Excellency George Papandreou, Minister of Foreign Affairs of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Samuel Berger, Assistant to the President for National Security Affairs.	Silver crossed filigree desk set that includes a sword letter opener, a dagger and a small brass camel, on an oval wood base. Recd—June 15, 1999. Est. Value—$500. General Services Administration.	His Excellency Yusuf bin Alawi Bin Abdullah, The Minister Responsible for Foreign Affairs of the Sultanate of Oman.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Samuel Berger, Assistant to the President for National Security Affairs.	8″ x 8″ silver compote with vermeil lining and six dolphin fish on the scalloped rim and three on the pedestal base. Recd—September 23, 1999. Est. Value—$950. General Services Administration.	The Honorable A. Tsohatzopoulos, Minister of National Defense, Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Samuel Berger, Assistant to the President for National Security Affairs.	(1) Three 29″ diameter leather embroidered pillow covers, $300 each. (2) 100″ diameter leather embroidered rug to match the pillow covers, $2100. Recd—October 26, 1999. Est. Value—$3000. General Services Administration.	The Honorable Aliyu Mohammadd, Nigerian National Security Advisor.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sean P. Maloney, Assistant to the President and Staff Secretary.	6″ round silver dish with gold plated sterling medallion. Recd—December 1, 1999. Est. Value—$350. General Services Administration.	His Excellency Constantinos Stephanopoulos, President of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
James. B. Steinberg, Deputy Assistant to the President for National Security Affairs.	6″ round silver dish with gold plated sterling medallion. Recd—December 3, 1999. Est. Value—$350. General Services Administration.	His Excellency Constantinos Stephanopoulos, President of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Jennifer Palmieri, Special Assistant to the Chief of Staff.	6″ round silver dish with gold plated sterling medallion. Recd—December 10, 1999. Est. Value—$350. General Services Administration.	His Excellency Constantinos Stephanopoulos, President of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency for International Development			
Anderson, J. Brady	Three gold coins in a brown leather case. Recd—November 23, 1999. Est. Value—$540.00. In the Administration awaiting disposition.	President Milo Djukanovic of the Republic of Montenegro.	Gift was from a high level foreign dignitary and was accepted to further government.
Air Force			
Gamble, Patrick (General)—Commander, Pacific Air Forces, Hickam Air Force Base, Hawaii.	Two Koji pottery dragons. Recd—November 18, 1999. Est. Value—$590.00 (aggregately). Retained for official display at Headquarters Pacific Air Forces, Hickam Air Force Base.	General Chen, Chaeo-Min, Taiwan Air Force.	Non-acceptance would have caused embarrassment to donor and United States Government.
Ryan, Jane Mrs.—wife of Chief of Staff, USAF, Washington, DC.	18-karat gold Kartouche. Recd—June 21, 1999. Est. Value—$200.00. Retained for official display at Air House (official residence of Chief of Staff, USAF).	Air Marshal Ahmed Shafik, Egyptian Air Force.	Non-acceptance would have caused embarrassment to donor and United States Government.
Ryan, Michael (General)—Chief of Staff, USAF, Washington, DC.	Sterling Silver Chilean matte cup. Recd—November 2, 1998. Est. Value—$325.00. Retained for official display at Air House (official residence of Chief of Staff, USAF).	General Fernando Rojas, Chief of Staff Chilean Air Force.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
Ryan, Michael (General)—Chief of Staff, USAF, Washington, DC.	Marble aircraft statue. Recd—November 2, 1998. Est. Value—$100.00. Retained for official display at Air House (official residence of Chief of Staff, USAF).	General Fernando Rojas, Chief of Staff, Chilean Air Force.	Non-acceptance would have caused embarrassment to donor and United States Government.
Taylor, Francis X. (Brigadier General)—Commander, Headquarters Air Force, Office of Special.	Watercolor print. Recd—June 22, 1998. Est. Value—$1,500.00. On official display at Headquarters Air Force Office of Special Investigations, Bolling Air Force Base, DC.	Superintendent General Yum Joe Lee, Attache, Embassy of the Republic of Korea, Washington, DC.	Non-acceptance would have caused embarrassment to the donor and the United States Government.
Taylor, Francis X. (Brigadier General)—Commander, Headquarters Air Force, Office of Special.	Watercolor print. Recd—June 22, 1998. Est. Value—$1,500.00. On official display at Headquarters Air Force Office of Special Investigations, Bolling Air Force Base, DC.	Superintendent General Yum Joe, Attache, Embassy of the Republic of Korea, Washington, DC.	Non-acceptance would have caused embarrassment to the donor and the United States Government.
Weston, Craig P. (Brigadier General)—Air Force Program Executive Officer, Command and Control,.	Tissot gold-tone wristwatch model—#T49.5.481.32. Recd—February 14, 1999. Est. Value—$275.00. Turned in to GSA, October 6, 1999.	Col. Sultan Bin Farhan Al-Milhin, Royal Saudi Air Force Peace Shield Project Officer.	Non-acceptance would have caused embarrassment to the donor and the United States Government.
Board of Governors of the Federal Reserve Sys			
Greenspan, Alan—Chairman	Pen and ink print, ''Fragment III'' by Noriko Yanagisawa. Recd—Sept. 7, 1999. Est. Value—$500.00. Retained for display.	Hakuo Yanagisawa, Chairman of the Japanese Financial Reconstruction Committee.	To have refused would have caused offense or embarrassment.
Central Intelligence Agency			
An Agency Employee	750 (18K) yellow gold circular braided necklace and matching bracelet, modern. (2 oz) Recd—June 10, 1999. Est. Value—$500.00. To be retained for official display.	5 U.S.C. 7343(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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Gordon, John A.—Deputy Director of Central Intelligence.	Embossed silver mounted gilt tooled black leatherette stationary stand, modern, rectangular form with hinged writing leaf opening to view a removable folio cover, beneath two hinged boxes centering a letter rack, each mounted with embossed floral silver panels. 22 x 18½ inches. Recd—November 18, 1999. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Governments.
Gordon, John A.—Deputy Director of Central Intelligence.	Geometric piece and applied blue and beige leather round rug and three round pillows, modern with muslin backing, worked in a radiating geometric pattern with stylized flowers in white, red, green and blue on alternating beige and blue grounds. (approx. 10 feet) Recd—November 11, 1999. Est. Value—$500.00 To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Gordon, John A.—Deputy Director of Central Intelligence.	Geometric pieced and applied beige and lavender leather round rug and three round pillows, modern, en suite with number 99–072. (approx. 10 feet) Recd—November 10, 1999. Est. Value—$500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Mother-of-pearl Bible box, modern, with a hinged top set with nativity scene, enclosing Holy Bible, Old and New Testament, published Collins' Clear Type Press, London and New York, with mother-of-pearl binding. 3¼ x 9¾ inches. Recd—October 29, 1999. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Cut glass tall vase, modern, mounted on walnut plinth, inscribed on lip 34cm Vaza Anfoka 1987. 13¾ inches. Recd—October 1, 1999. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Brass mounted chagrin commemorative dagger and parade hat, modern, from the Third Lancers, 1815–1831. Recd—September 27, 1999. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	24 Karat textured gold 'loop and star' necklace, modern, marked 9999. Recd—December 2, 1999. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Tenet, George J.—Director of Central Intelligence.	Silver gilt group of a horned animal beneath a palm tree, modern. 7 inches. Recd—November 1, 1999. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Mother-of-pearl Diorama of Nativity and The Last Supper, modern. Each with applied plaque (17 x 23 x 2½ inches). Recd—October 26, 1999. Est. Value—$500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Commemorative six-piece coin set, 1993, consisting of: 3 gold coins and 3 silver coins, each with double-headed eagle and dates 1943–1993. Recd—October 1, 1999. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Marquetry ebonized wood hexagonal folding trestle-base table, modern, with scenes of early civilization. Recd—October 28, 1999. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Engraved silver coffee pot, modern, of typical form 14½ inches. Recd—November 2, 1999. Est. Value—$500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Herend six-piece desk set, Rothschild Bird pattern #RO, modern, consisting of: oblong tray, cup and undertray, footed small cup, seal and a covered box. Recd—September 28, 1999. Est. Value—$500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Daum amber pat-de-verre glass figure of a standing woman, modern, inscribed Daum/France. 10 inches. Recd—May 19, 1999. Est. Value—$500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Contemporary silver and specimen amethyst and rock crystal bust of a Horse, modeled by Laido, modern, mounted on mottled black marble oval base. 17 inches. Recd—October 29, 1999. Est. Value—$750.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Commerce			
Daley, William M.—Secretary of Commerce.	Mother of Pearl replica of ''The Manger Scene/Bethlehem 2000''. Recd—October 11, 1999. Est. Value—$800.00. Commerce for disposition.	Mr. Yasser Arafat, Chairman, Palestinian Liberation Organization.	Non-acceptance would have caused embarrassment to donor and United States Government.
Daley, William M.—Secretary of Commerce.	14″ x 16″ Framed Multicolored Mosaic Painting. Recd—October 15, 1999. Est. Value—$275.00. Department of Commerce for disposition.	H.E. Osama Faqih, Minister of Commerce of Saudi Arabia/Riyadh.	Non-acceptance would have caused embarrassment to donor and United States Government.

REPORT OF TANGIBLE GIFTS—Continued

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Daley, William M.—Secretary of Commerce.	8″ x 12″ Metal Sculptured Horse mounted on stone with quartz formations. Recd—October 17, 1999. Est. Value—$800.00. Department of Commerce for disposition.	H.H. Sultan Bin Zayed Al Nahyan, Deputy Prime Minister of the United Arab Emirates, Abu Dhabi.	Non-acceptance would have caused embarrassment to donor and United States Government.
Defense			
Cohen, Mrs.—Spouse of Secretary of Defense (William Cohen).	Pearl Necklace Double Strand. Recd—March 4, 1998. Est. Value—$2,600.00. Reported to GSA on October 8, 1999.	Essa Bin Salman Al Khalifa, The Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, Mrs.—Spouse of Secretary of Defense (William Cohen).	Lady's Rolex. Recd—March 4, 1998. Est. Value—$4,700.00. Reported to GSA on October 14, 1999.	Essa Bin Salman Al Khalifa, The Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, Mrs.—Spouse of Secretary of Defense (William Cohen).	Pearl Bracelet Double Strand in a Gold Band. Recd—March 4, 1998. Est. Value—$720.00. Reported to GSA on October 14, 1999.	Essa Bin Salman Al Khalifa, The Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, Mrs.—Spouse of Secretary of Defense (William Cohen).	Hand made Gold Bracelet with enameled Beetle. Recd—March 4, 1998. Est. Value—$970.00. Reported to GSA—October 8, 1999.	Field Marshal Hussein Tantawy, Minister of Defense (Egypt).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, Mrs.—Spouse of Secretary of Defense (William Cohen).	Gold Egyptian Bracelet. Recd—December 24, 1998. Est. Value—$600.00. Retained for Official Display.	Essa Bin Salman Al Khalifa, The Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, William S.—Secretary of Defense.	Head cast metal, on white marble block. Recd—January 8, 1999. Est. Value—$1,200.00. Returned for Official Display.	Unknown	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, William S.—Secretary of Defense.	Man's Wristwatch, Rolex. Recd—January 8, 1999. Est. Value—$2,120.00. Retained for Official Display.	Unknown	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, William S.—Secretary of Defense.	Hand made Silk Carpet (Floral Design). Recd—March 8, 1998. Est. Value—$650.00. Reported to GSA on October 8, 1999.	Field Marshal Hussein Tantawy, Minister of Defense (Egypt).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, William S.—Secretary of Defense.	Lady's Wristwatch Rolex. Recd—January 8, 1999. Est. Value—$1,680.00. Retained for Official Display.	Unknown	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, William S.—Secretary of Defense.	Handmade Silk Carpet (Floral Design). Recd—March 8, 1998. Est. Value—$700.00. Reported to GSA on October 8, 1999.	Field Marshal Hussein Tantawy, Minister of Defense (Egypt).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, William S.—Secretary of Defense.	Wristwatch Rolex. Recd—Unknown. Est. Value—$5,220.00. Retained for Official Display.	Unknown	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, William S.—Secretary of Defense.	Jewelry/Writing Set. Recd—January 8, 1999. Est. Value—$4,895.00. Retained for Official Display.	Unknown	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Kramer, Franklin D.—ASD for ISA	Gold Cherub Key Chain. Recd—May 17, 1999. Est. Value—$290.00 Reported to GSA on October 8, 1999.	Field Marshal Hussein Tantawy, Minister of Defense (Egypt).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Kramer, Franklin D.—ASD for ISA	Three Blue Leather Mats and 23x27 small throw rug. Recd—May 18, 1999. Est. Value—$280.00. Retained for Official Display.	Gen. Abdulsalami A. Abubakar, Head of State of the Republic of Nigeria.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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Kramer, Franklin D.—ASD for ISA	Beige Rug (53x37). Recd—March 13, 1999. Est. Value—$600.00. Reported to GSA on October 8, 1999.	Field Marshal Hussein Tantawy, Minister of Defense (Egypt).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Kramer, Franklin D.—ASD for ISA	Silver Lamp. Recd—March 13, 1999. Est. Value—$480.00. Reported to GSA on October 8, 1999.	Lt. Gen. Magdy Hatata, Chief of Staff, Egyptian Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Kramer, Mrs.—Spouse of ASD for ISA.	20″ Gold Kartouche Necklace. Recd—May 17, 1999. Est. Value—$365.00. Reported to GSA on October 8, 1999.	Field Marshal Hussein Tantawy, Minister of Defense (Egypt).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Kramer, Mrs.—Spouse of ASD for ISA.	Egyptian Bracelet. Recd—March 13, 1999. Est. Value—$830.00. Reported to GSA on October 14, 1999.	Wife of Field Marshal Hussein Tantawy, Minister of Defense (Egypt).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ralston, Joseph W.—General, USAF Vice Chairman of the Joint Chiefs of Staff.	Chalice with decorative stones. Recd—December 10, 1998. Est. Value—$400.00. Reported to GSA on October 12, 1999.	General Lieutenant David Tevzadze, Minister of Defense, Republic of Georgia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Romanowski, Alina, ASD of Defense Near Eastern and South Asian Affairs, ISA.	Two Gold Bracelets. Recd—December 3, 1998. Est. Value—$1,960.00. Reported to GSA on October 12, 1999.	H.E. Shaykh Salim al-Sabah Al-Salim Al Sahah, Minister of Defense.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Sattler, John F.—Brigadier General	Dunhill Watch. Recd—May 11, 1999. Est. Value—$345.00. Reported to GSA on October 14, 1999.	Lt. General Ali, Chief of Defense, Kuwait.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Shelton, Henry H.—General, Joint of Chiefs of Staff.	Suit of Armor. Recd—March 11, 1999. Est. Value—$280.00. Retained for Official Display.	LTG Henryk Szumski	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Shelton, Mrs.—Spouse of General Henry H. Shelton, Chairman of the Joints Chiefs of Staff.	Concord ladies watch. Recd—March 11, 1999. Est. Value—$950.00. Reported to GSA on October 6, 1999.	General and Mrs. Al-Attayah, Chief of Staff, Qatar Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Smith, Frederick C.—PASD for ISA.	Globe. Recd—September 2, 1998. Est. Value—$3500.00. Reported to GSA on October 12, 1999.	Sheikh Salman, Under Secretary of Defense Policy, Bahrain MOD.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tyrer, Bob—Chief of Staff	Eterna Men's watch in a wood presentation box. Recd—March 4, 1998. Est. Value—$2870.00. Reported to GSA on October 14, 1999.	Essa Bin Salman al Khalifa, Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Unruh, Brian—Near Eastern and South Asian Affairs.	Man's watch—Christian Dior Ser# D71–100 AJ5787. Recd—December 23, 1998. Est. Value—$380.00. Reported to GSA on October 14, 1999.	Col. Mohammed al-Sobaie, Military Liaison Officer, Embassy of Kuwait.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Justice			
Carter, J.C.—Assistant Director In Charge, Washington Field Office.	Gold Coin. Recd—April 1999. Est. Value—$272.00. On display in Washington Field Office.	Saudi Arabia Mabahith	Courtesy gift received during meeting.
Marine Corps			
Schneider, H. Jr. (Major)—U.S. Central Command.	Candino Swiss Watch. Recd—September 29, 1999. Est. Value—$462.00. Forwarded to GSA for disposition.	Col Ahem Al-Al-Yatama—Kuwait	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Zinni, A.C. (General)—CINC, U.S. Central Command.	Egyptian Prayer Rug. Recd—November 1999. Est. Value—$2500.00. Individual purchased.	Lt. Gen. Hattata—Chief of Staff (Egypt).	Non-acceptance would have caused embarrassment to donor & U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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Zinni, A.C. (General)—CINC, U.S. Central Command.	Sig Saul P228 9mm Combat Pistol. Recd—December 15, 1998. Est. Value—$1098.00. Individual purchased.	Sheikh Isa bin Sulman Al-Khalifa—Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Navy			
Cheney, Stephen A. (Bgen)—Marine Corps IG.	Man's Eterna 18K Gold Watch. Recd—February 17, 1999. Est. Value—$7,500.00. Forwarded to GSA on July 16, 1999 for disposition.	Sheikh Isa bin Sulman Al-Khalifa—Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Danzig, Richard—Secretary of the Navy.	Woman's Rolex 18K Watch. Recd—February 17, 1999. Est. Value—$9000.00. Forwarded to GSA on July 16, 1999 for disposition.	Sheikh Isa bin Sulman Al-Khalifa—Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Danzig, Richard—Secretary of the Navy.	Tiffany & Co. Brass Alarm Clock and Tiffany & Co. Sterling Silver Gold Pen (given as one gift). Recd—February 15, 1999. Est. Value—$700.00 & $250.00. Forwarded to GSA on July 16, 1999 for disposition.	Sheikh Saud Nasser—Kuwait Minister of Oil.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Danzig, Richard—Secretary of the Navy.	Man's Rolex 18K Watch. Recd—February 17, 1999. Est. Value—$14,000.00. Forwarded to GSA on July 16, 1999 for disposition.	Sheikh Isa bin Sulman Al-Khalifa—Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Danzig, Richard—Secretary of the Navy.	Two-strand Pearl Necklace. Recd—February 17, 1999. Est. Value—$9000.00. Forwarded to GSA on July 16, 1999 for disposition.	Sheikh Isa bin Sulman Al-Khalifa—Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Stavridis, James (Captain)—Executive Assistant & Naval I/Aide to the Secretary of the Navy.	Man's Eterna 18K Gold Watch. Recd—February 17, 1999. Est. Value—$7,500.00. Forwarded to GSA on July 16, 1999 for disposition.	Sheikh Isa bin Sulman Al-Khalifa—Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Work, Robert (Colonel)—Military Assistant & Marine Aide to the Secretary of the Navy.	Man's Eterna 18K Gold Watch. Recd—February 17, 1999. Est. Value—$7,500.00. Forwarded to GSA on July 16, 1999 for disposition.	Sheikh Isa bin Sulman Al-Khalifa—Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Office of the Vice President			
Mrs. Gore	Black silk evening bag with crystal beading decoration. Recd—June 6, 1999. Est. Value—$350.00. Archives.	Keizo Obuchi, Prime Minister of Japan and Mrs. Obuchi.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Gore	African masks in black frame. Recd—June 6, 1999. Est. Value—$400.00. Archives.	Mrs. Marguerite Midjo Keredou, c/o Embassy of the Republic of Benin.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Gore	Broach in 20–22 kt. Gold, design of the Cycladic period. Recd—March 17, 1999. Est. Value—$500.00. Archives.	Mr. and Mrs. Vardis and Mariana Vardinoyannis, Athens.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
OVP Staff	Blue leather box with gold trim—inside is a silver box with a seal. Recd—May 3, 1999. Est. Value—$2500.00. Archives.	Nursultan Nazabayez, President of the Republic of Kazakhstan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Vice President	1. Statuette of Ukrainian figure. 2. Miniature gold mace. 3. 1999 commemorative silver coin. 4. Glass Vase. Recd—December 8, 1999. Est. Value—$ over $250.00, awaiting appraisal. Office of the Vice President.	Leonid Kuchma, President of Ukraine.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vice President	Sculpture of calf by inuk artist. Recd—May 3, 1999. Est. Value—$1000.00. Archives.	Prime Minister Jean Chretien, Prime Minister of Canada.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Vice President	Baseball autographed by Sammy Sosa. Recd—December 12, 1999. Est. Value—$ over $250.00 awaiting appraisal. Office of the Vice President.	Roberto B. Saladin Selin, Ambassador of the Dominican Republic, Washington, DC.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Vice President and Mrs. Gore	Jewelry: gold pin for Mrs. Gore (reproduction of pre-Columbian artifact excavated in Panama), gold cufflinks for VP. Recd—October 19, 1999. Est. Value—$650.00. Archives.	Mireya Moscoso, President of Republic of Panama.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Vice President and Mrs. Gore	Small carriage clock; Koran-sha white porcelain vase. Recd—June 6, 1999. Est. Value—$350.00. Archives.	Keizo Obuchi, Prime Minister of Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Vice President and Mrs. Gore	Porcelain Jar. Recd—December 12, 1999. Est. Value—$ over $250.00, awaiting appraisal. Office of the Vice President.	Yuriy Viktorovich Ushakov, Ambassador Extraordinary and Plenipotentiary of the Russian Federation, Washington, DC.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Senate			
Durbin, Richard J—U.S. Senator	Commemorative historical sword. Recd—April 21, 1999. Est. Value—$260.00. Displayed in Senate Office, SR 364.	Buzek, Jerzy—Prime Minister of Poland.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Shelby, Richard C. and Annette Nevin Shelby—U.S. Senator and Wife.	Gems Painting. Recd—September 1, 1999. Est. Value—$150.00. Deposited with Secretary of Senate.	Maj. Gen. Ye Myint of Myanmar	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Shelby, Richard C. and Annette Nevin Shelby—U.S. Senator and Wife.	Nine-Gems Ring. Recd—August 31, 1999. Est. Value—$300.00. Deposited with Secretary of Senate.	Lt. Gen. And Mrs. Khin Myunt of Myanmar.	Non-acceptance would have caused embarrassment to donor and the U.S.
Shelby, Richard C. and Annette Nevin Shelby—U.S. Senator and Wife.	Silver Tea Set. Recd—August 23, 1999. Est. Value—$3,500.00. Deposited with Secretary of Senate.	President B.J. Habibie of Indonesia.	Non-acceptance would have caused embarrassment to donor and the U.S. .
Sisco, Gary—Secretary of Senate	Waterman Pen. Recd—May 8, 1999. Est. Value—$300.00. Deposited with Secretary of Senate.	Harold Romer, Deputy Secretary General of the European Parliament.	Non-acceptance would have caused embarrassment to donor and the U.S.
State			
Albright, Madeleine K.—Secretary of State.	Silver Brooch with stones. Recd—December 22, 1999. Est. Value—$350.00. Office of Protocol for Disposition.	President Weizman—Israel	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Albright, Madeleine K.—Secretary of State.	Gold bracelet and necklace. Recd—December 8, 1999. Est. Value—$500.00. Office of Protocol for Disposition.	Chairman Yasser Arafat (PLO)	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Albright, Madeleine K.—Secretary of State.	Gold Bracelet. Recd—1998. Est. Value—$800.00 Office of Protocol for disposition.	Suha Arafat, First Lady (PLO)	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Albright, Madeleine K.—Secretary of State.	Gold Chain. Recd—September 20, 1999. Est. Value—$400.00. Office of Protocol for disposition.	Sheikh Hasina, Prime Minister (Banglesh).	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Albright, Madeleine—Secretary of State.	Gold Necklace with diamonds. Recd—October 22, 1999. Est. Value—$1500.00. Office of Protocol for disposition.	Chairman Yasser Arafat (PLO)	Non-acceptance would have caused embarrassment to donor & U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Albright, Madeleine—Secretary of State.	6″ Round Silver Box w/lid. Recd—May 26, 1999. Est. Value—$500.00. Office of Protocol for disposition.	Lamberto Dini, Foreign Minister (Italy).	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Ambassador Wife—Lagos	One double strand pearl necklace and matching earrings. Recd—July 1999. Est. Value—$325.00. Delivered to GSA on Sept. 7, 1999.	Lagos Government	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Bartels, Camila—Public Affairs	Eterna watch. Recd—November 1997. Est. Value—$2,550.00 Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Brill, Kenneth—Ambassador	Painting (Animal Abstractions). Recd—July 1, 1999. Est. Value—$460.00. Retained at Embassy for Official Display.	Foreign Government—Nicosia	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Brill, Kenneth—Ambassador	Painting (Ghost Island). Recd—July 1, 1999. Est. Value—$550.00. Retained at the Embassy for Official Display.	Foreign Government—Nicosia	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Bujac, Greg—Diplomatic Security	Eterna Watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Burnei—Admin Consul	Revue, Thommen Watch. Recd—December 23, 1997. Est. Value—$1,500.00. Office of Protocol for Disposition.	Burundian Royal Family Member	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Burnei—Ambassador	Baume & Mercier Watch. Recd—December 23, 1997. Est. Value—$3,500.00. Office of Protocol for Disposition.	Burundian Royal Family Member	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Burnei—Charge	Tag Heuer Watch. Recd—December 23, 1997. Est. Value—$1500.00. Office of Protocol for Disposition.	Burundian Royal Family Member	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Burns, Nick—Ambassador	Black Leather bound Coin Collection (''one Century of Greek Coins; 1880–1995''. Recd—April 19, 1999. Est. Value—$1,677.00. Retained at the Embassy for Official Display.	Wife of Ministry of Defense official	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Burns, William—Ambassador	Motorola Cellular Telephone GSM package with accessories. Recd—Unknown Est. Value—$536.00. Retain at the Embassy for Official Use.	Greek Official at the Thessaloniki Trade Fair.	Non-acceptance would have cause embarrassment to donor & U.S. Government.
Cook, Frances D.—Mother of Ambassador for Muscat.	Set of traditional Omani Tribal Jewelry including necklace, ring, bracelet and earring. Recd—Late 1996. Est. Value—$700.00. Office of Protocol for disposition.	Ghassan Al Khalili	Non-acceptance would caused embarrassment to donor & U.S. Government.
Cook, Frances D.—Mother of Ambassador for Muscrat.	Two traditional Gold Omani Bracelets. Recd—December 26, 1997. Est. Value—$600.00. Office of Protocol for disposition.	Almutasim Bin Hamoud Al Busaidi, Minister of State and Governor of Muscat.	Non-acceptance would have cause embarrassment to donor & U.S. Government.
Dubai Consulate Political Officer ...	Gold Bracelet. Recd—October 1999. Est. Value—$274.00. Delivered to GSA on Sept. 7, 1999.	Leading Member of Dubai Business Community.	Gift was present as a mark of courtesy. To refuse would have been counter to U.S. interests.
Duncan, Charles—White House Liaison Office.	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Fowler, Wyche—Ambassador	Harry Winston Timepiece (Watch). Recd—September 1998. Est. Value—$10,666.00. Delivered to GSA on Sept. 7, 1999.	Saudi Crown Abdullah bin Abdul Aziz Al Saud.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
George, Suzanne—Office of Secretary.	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Buhrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Hale, David—Office of Secretary ...	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Hartnett, Larry—Diplomatic Security.	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Haycraft, Tom—Diplomatic Security.	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Helal, Gemal—Interpreter	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Hicks, Delores—Line Assistant	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Hipp, Mark—Diplomatic Security ...	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Hurly, John—Diplomatic Security ..	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Inderfurth, Karl F.—Assistant Security.	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Inderfurth, Karl F.—Asst. Sec. For South Asian Affairs.	Lalique Crystal Clock. Recd—May 11, 1999. Est. Value—$260.00. Delivered to GSA on Sept. 7, 1999.	The Hinduja Group	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Inderfurth, Karl F.—Asst. Sec. For South Asian Affairs.	Sterling Silver dessert service (4 piece place settings for six). Recd—April 26, 1999.Est. Value—$2,130.00. Delivered to GSA on September 7, 1999.	Mr. Islom, President of Uzbekistan	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Indyk, Martin—Assistant Secretary	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Indyk, Martin—Assistant Secretary	Versay Men's watch. Recd—October 7, 1999. Est. Value—$500.00. Office of Protocol for Disposition.	General Samih Battikhi, Chief of Jordanian Intelligence.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Indyk, Martin S. and wife—Asst. Sec. for Near East Affairs.	Two Swiss Watches. Recd—October 1999. Est. Value—$260.00/ $260.00. Office of Protocol for disposition.	Abu Mazen, Secretary General, PLO Executive Committee.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Koumans, Mark—Line Officer	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Krajeski, Thomas—Consul General	Mont Blanc Pen. Recd—October 1999. Est. Value—$800.00. Delivered to GSA on Sept. 7, 1999.	Leading Member of Dubai Business Community.	Gift was presented as a mark of courtesy. To refuse would have been counter to US interests.
Krajeski, Thomas—Consul General	Tissot Chronograph. Recd—October 1999. Est. Value—$1,200.00. Delivered to GSA on Sept. 7, 1999.	Leading Member of Dubai Chamber of Commerce.	Gift was presented as a mark of courtesy. To refuse would have been counter to US interests.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Lakhdhir, Kamala—Line Officer	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Lineberry, Laura Elizabeth—Secretary.	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Lucas, Hillary—Gift Officer	Oyster Perpetual Date Watch. Recd—June 8, 1998. Est. Value—$11,700.00. Office of Protocol for disposition to GSA.	The Amir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Luck, Al—Diplomatic Security	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Maybus, Raymond E. Jr—Ambassador.	4.5 x 2″ Solid Silver Calendar, dipped in gold. Recd—January 9, 1998. Est. Value—$960.00. Office of Protocol for disposition.	Ahmed Zaki Yamani of Dallah Real Estate and Tourism Company—Jeddah.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Miller, Aaron—SMEC	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Moore, Alex—Diplomatic Security	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Morningstar, Richard—Ambassador.	4x6 rug. Recd—February 19, 1999. Est. Value—$250–500.00. Retained at Embassy for Official Display.	President Saparmurat Niyazov	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Morningstar, Richard—Ambassador.	4x6 rug. Recd—April 26, 1999. Est. Value—$250–500.00. Retained for Official Display.	President Heydar Aliyev, Azerbaijan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Morningstar, Richard—Ambassador.	4x6 rug. Recd—May 19, 1999. Est. Value—$250–500.00. Retained at the Embassy for Official Display.	President Saparmurat Niyazov, Turkmenistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mussomeli, Joseph A.—Deputy Chief of Mission.	Gold Omega Men's watch with one pair of gold cufflinks and gold Omega Lady's watch with diamonds, Two-strand Bahraini pearl necklace. Recd—September 23, 1998. Est. Value—$5700.00, $5,700.00, $7,960.00 ($19,360.00). Delivered to GSA on Sept. 7, 1999.	Amir, Shaikh Isa Bin Salman Al-Khalifa, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Ogle, Karen—Foreign Service Officer.	Diamond and White Gold Ring. Recd—June 22, 1999. Est. Value—$1850.00. Delivered to GSA on Sept. 7, 1999.	Princess Shamsa al-Saud, Jeddah.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Petrihos, Peter—Deputy Executive Director.	Eterna watch. Recd—November 1997. Est Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Ransom, David—Ambassador (Retired).	Ebel Watch and $13,217.00 cash. Recd—February 1999. Est. Value—Above $260.00. Office of Protocol for disposition, money forwarded to appropriate agency.	Amir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Ransom, David—Ambassador (Retired).	Rolex Watch and $26,490.00 cash. Recd—July 1998. Est. Value—Above $260.00. Office of Protocol for disposition, money forwarded to appropriate agency.	Amir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ransom, David—Ambassador (Retired).	Rolex Watch and $25,000.00 cash. Recd—June 1998. Est. Value—Above $260.00. Office of Protocol for disposition, money forwarded to appropriate agency.	Amir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Ransom, David—Ambassador (Retired).	Rolex Watch and $52,966.88 cash. Recd—November 97. Est. Value—Above $260.00. Office of Protocol for disposition, Money forwarded to appropriate agency.	Amir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Ransom, Marjorie—Foreign Service Officer.	Gold Bracelet with pearls. Recd—October 1999. Est. Value—Above $260.00. Office of Protocol for disposition.	Foreign Minister of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Reside, Julie—Public Affairs	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Riyadh—Consular Section at Embassy Saudi Arabia.	Longines Timepiece, Roamer of Switzerland watch with metal band (2), Roamer of Switzerland with leather band. Recd—January 31, 1999. Est. Value—$322.66, 133.33, 133.33, 120.00 = $709.32. Office of Protocol for Disposition.	H.R.H. Prince Turki Al-Faisal bin Abdul Aziz al Saud, Director of Intelligence.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Roy, J. Stapleton—Ambassador	A boxed piece of Silk Batik Fabric. Recd—Unknown. Est. Value—$600.00. Retained at the Embassy for Official Display.	President Habibie, Indonesia	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Roy, J. Stapleton—Ambassador	A Boxed Silver and Pewter Tea Service. Recd—Unknown. Est. Value—$1250.00. Retained at the Embassy for Official Use.	President Habibie, Indonesia	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Rubin, James P.—Assistant Secretary and Spokesman.	Pocket watch with the country's seal and tradition cap. Recd—08/17/99. Est. Value—$275.00. Office of Protocol for Disposition.	Unknown	Non-acceptance would have caused embarrassment to the donor and the United States Government.
Rubin, James P.—Spokesperson	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Shinnick, Richard—Deputy Executive Director.	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Shocas, Elaine—Chief of Staff	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Stocking, Tom—Diplomatic Security.	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Sweeney, Lynn—Computer Specialist.	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Tucker, Nichole—Secretary	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
USUN	Two Carpets: 139″ x 102″ plus fringe, wool on cotton, red field with many octagon and cross medallions, multiple borders, Pakistani Bokhara. Recd—April 1998. Est. Value—$1500.00 each. Delivered to GSA on Sept. 7, 1999.	Visiting Delegation of Afghanistan	Non-acceptance would have caused embarrassment to donor & U.S. Government.
USUN	Three (3) wool pile hand knotted carpets. Recd—April 1998. Est. Value—$300.00 ea. ($900.00). Retained at the Embassy for Official Use.	Visiting Delegation of Afghanistan	Non-acceptance would have caused embarrassment to donor & U.S. Government.
USUN	Two Carpets: 154″ x 230″ and 148″ x 226″ plus fringe, wool on cotton, red field with many octagonal and cross medallions, multiple borders, Pakistani Bokhara. Recd—April 1998. Est. Value—$2250.00 each. Delivered to GSA on Sept. 7, 1999.	Visiting Delegation from Afghanistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Welch, David C.—Ambassador	4.5 x 2″ Solid Silver Calendar dipped in gold. Recd—January 9, 1998. Est. Value—$960.00. Office of Protocol for Disposition.	Ahmed Zaki Yamani of Dallah Real Estate and Tourism Co.—Jeddah.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Wills, Laura B.—Assist. Chief of Protocol, Visits.	Raymond Weil Geneve Watch. Recd—November 5, 1999. Est. Value—$500.00. In the Office of Protocol for Disposition.	Crown Prince Sultan bin Abdul Aziz, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Woodward, William—Speechwriter	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Young, Johnny—Ambassador	Pair of men's cufflinks in white gold with onyx and diamonds, pair of women's earrings and one ring with two-toned gold with diamonds. Recd—July 13, 1998. Est. Value—$3,580.00, $3,980.00 ($26,920.00). Delivered to GSA on Sept. 7, 1999.	Amir Shaikh Isa Bin Salman Al-Khalifa, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Young, Johnny—Ambassador	Men's Piaget wristwatch in white gold with date function and women's Piaget wristwatch in white gold with diamond chips. Recd—February 22, 1999. Est. Value—$12,000.00 & $11,400.00 ($23, 400.00) Office of Protocol for Disposition.	Amir, Shaikh Isa bin Salman Al-Khalifa, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Young, Johnny—Ambassador	Men's Piaget wristwatch in white gold with date function and women's Piaget wristwatch in white gold with diamond chips. Recd—February 22, 1999. Est. Value $12,000 and $11,400.00 ($23,400.00). Delivered to GSA on Sept 7, 1999.	Amir, Shaikh Isa bin Salman Al-Khalifa, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

REPORT OF TRAVEL OR EXPENSES OF TRAVEL—1999

Name and title	Brief description	Identity of foreign donor	Circumstances
National Council on Disability			
Blank, Kathleen—Program Specialist.	Recd—July 18, 1999. Est. Value—$4,170.00. Expended for airfare, hotel, meals and conference registration for speaking engagement in Kuala Lumpur, Malaysia.	Airports Council International, Richmond, B.C., Canada.	To present paper and guest speak at conference.
U.S. General Accounting Office			
Epstein, David—GAO Evaluator	Recd—November 19–24, 1999. Est. Value—$800.00. Expended for airfare, hotel and meals.	Barbados Tourist Board, Barbados.	To become a specialist in the field of travel/tourism for Barbados as related to Mr. Epstein's ownership of a travel agency.
United States House of Representatives			
Hilliard, Earl—Member of Congress.	Recd—April 2, 1999. Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	Hashemite Kingdom of Jordan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Burr, Richard—Member of Congress.	Recd—August 11–14, 1999. Est. Value—$not submitted. Air transport, rail travel, boat tour, meals and lodging for Member and spouse in Oslo and Bergen, Norway.	Norway	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Campbell, Tom—Member of Congress.	Recd—Nov. 24–25, 1999. Est. Value—$not submitted. Air transportation between Rangoon, Keng Tung, and Tachileik, Burma.	Burma	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Cardin, Benjamin—Member of Congress.	Recd—May 28–30, 1999. Est. Value—$not submitted. Meals, lodging and ground transportation for Member and spouse in Belfast, Northern Ireland.	United Kingdom of Great Britain ..	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Carson, Julia—Member of Congress.	Recd—May 28–30, 1999. Est. Value—$not submitted. Meals, lodging and ground transportation in Belfast, Northern Ireland.	United Kingdom of Great Britain ..	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Gilman, Benjamin—Member of Congress.	Recd—April 2, 1999. Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	Hashemite Kingdom of Jordan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Van Wicklin, Robert W.—Rep. Houghton.	Recd—May 28–29, 1999. Est. Value—$not submitted. Meals and ground transportation in Belfast, Northern Ireland.	United Kingdom of Great Britain ..	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Greenwood, James C.—Member of Congress.	Recd—May 28–30, 1999. Est. Value—$not submitted. Food, lodging and ground transportation for Member and spouse in Belfast, Northern Ireland.	United Kingdom of Great Britain ..	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Hobson, David—Member of Congress.	Recd—August 11–14, 1999. Est. Value—$not submitted. Transportation from Stockholm to Oslo and return, and in-country lodging, meals, and transportation for Member and spouse among Myrdal, Flom, Gudvangen and Bergen, Norway.	Norway	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Houghton, Amory Jr.—Member of Congress.	Recd—May 28–30, 1999. Est. Value—$not submitted. Meals, lodging and ground transportation for Member and spouse in Belfast, Northern Ireland.	United Kingdom of Great Britain ..	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).

REPORT OF TRAVEL OR EXPENSES OF TRAVEL—1999—Continued

Name and title	Brief description	Identity of foreign donor	Circumstances
Johnson, Eddie Bernice—member of Congress.	Recd—May 28–30, 1999. Est. Value—$not submitted. Meals, lodging and ground transportation for Member and spouse in Belfast, Northern Ireland.	United Kingdom of Great Britain ..	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Ford, James Dr.—House Chaplin ..	Recd—April 2, 1999. Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	Hashemite Kingdom of Jordan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Filner, Bob—Member of Congress	Recd—April 2, 1999. Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	Hashemite Kingdom of Jordan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Roberts, Kimberly—International Relations Comm.	Recd—April 2, 1999. Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	Hashemite Kingdom of Jordan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
McNulty, Michael R.—Member of Congress.	Recd—May 28–30, 1999. Est. Value—$not submitted. Meals, lodging and ground transportation in Belfast, Northern Ireland.	United Kingdom of Great Britain ..	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Olson, Susan L.—Rep. Bereuter ...	Recd—August 24–September 2, 1999. Est. Value—$not submitted. Lodging in Istanbul, Antalyla and Ankara, Turkey.	Republic of Turkey	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Munson, Lester—International Relations Comm.	Recd—April 2, 1999. Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	Hashemite Kingdom of Jordan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Conzelman, James K.—Rep. Oxley.	Recd—August 11–14, 1999. Est. Value—$not submitted. Transportation from Stockholm to Oslo and return, and in-country lodging, meals, and transportation for Member and spouse among Myrdal, Flom, Gudvangen and Bergen, Norway.	Norway	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Clack, Mark—International Relations Comm.	Recd—April 2, 1999 Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	Hashemite Kingdom of Jordan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Bodlander, Deborah—International Relations Comm.	Recd—April 2, 1999. Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	Hashemite Kingdom of Jordan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Bloomer, Nancy Shuba—International Relations Comm.	Recd—April 2, 1999. Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	.....	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Wolf, Frank—Member of Congress	Recd—August 29, 1999. Est. Value—$not submitted. Airline flight from Rome to Pristina and helicopter flight over Pristina, Gjacova and Prizren for Member and spouse.	World Food Programme (UN)	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Sanders, Bernard—Member of Congress.	Recd—April 2, 1999. Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	Hashemite Kingdom of Jordan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Oxley, Michael—Member of congress.	Recd—August 11–14, 1999. Est. Value—$not submitted. Transportation from Stockholm to Oslo and return, and in-country lodging, meals and transportation for Member and spouse among Myrdal, Flom, Gudvangen and Bergen, Norway.	Norway	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).

REPORT OF TRAVEL OR EXPENSES OF TRAVEL—1999—Continued

Name and title	Brief description	Identity of foreign donor	Circumstances
Flanders, David Alan—Rep. Thompson.	Recd—August 24–26, 1999. Est. Value—$not submitted. Luncheon and dinner in Japan.	Japan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
United States Senate			
Walsh, Sally—Director, Interparliamentary Services.	Recd—August 13–15, 1999. Est. Value—$not submitted. Transportation within Cuba to official meetings via two sedans and one minivan.	Government of Cuba	Non-acceptance would cause host government embarrassment.
Dorgan, Byron L.—U.S. Senator	Recd—August 13–15, 1999. Est. Value—$not submitted. Official meetings via two sedans and one minivan.	Government of Cuba	Non-acceptance would cause host government embarrassment.
Daschle, Tom—U.S. Senator	Recd—August 13–15, 1999. Est. Value—$not submitted. Official meetings via two sedans and one minivan.	Government of Cuba	Non-acceptance would cause host government embarrassment.
Bob, Daniel—Special Assistant to Senator Roth.	Recd—January 11–15, 1999. Est. Value—$not submitted. Meals and transportation within Peru.	Government of Peru	Non-acceptance would cause host government embarrassment.
Daschle, Linda—Spouse of Senator.	Recd—August 13–15, 1999. Est. Value—$not submitted. Official meetings via two sedans and one minivan.	Government of Cuba	Non-acceptance would cause host government embarrassment.
Dorgan, Kim—Spouse of Senator	Recd—August 13–15, 1999. Est. Value—$not submitted. Official meetings via two sedans and one minivan.	Government of Cuba	Non-acceptance would cause host government embarrassment.
Roberts, Pat—U.S. Senator	Recd—August 12–14, 1999. Est. Value—$not submitted. Transportation, lodging and meals within Norway during an official visit.	Government of Norway	Official travel to participate in official meetings.
Roberts, Frankie—Spouse of Senator.	Recd—August 12–14, 1999. Est. Value—$not submitted. Transportation, lodging and meals within Norway during an official visit.	Government of Norway	Official travel to participate in official meetings.
Twining, Daniel C.—Legislative Correspondent to Senator McCain.	Recd—April 7–8, 1999. Est. Value—$not submitted. Round-trip transportation between Brussels, Belgium and Tirana, Albania aboard Belgian military aircraft to attend official meetings.	Government of Belgium	No commercial travel available.
Twining, Daniel C.—Legislative Correspondent to Senator McCain.	Recd—May 12, 1999. Est. Value—$not submitted. Transportation from Brussels, Belgium to Skopje, Macedonia aboard Belgian military aircraft to attend official meetings.	Government of Belgium	No commercial travel available.
Waldren, Howard—Legislative Assistant to Senator Dorgan.	Recd—August 13–15, 1999. Est. Value—$not submitted. Transportation within Cuba to official meetings via two sedans and one minivan.	Government of Cuba	Non-acceptance would cause host government embarrassment.
Van Dum, Bradley—Legislative Assistant for Defense for Senator Daschle.	Recd—August 13–15, 1999. Est. Value—$not submitted. Transportation within Cuba to official meetings via two sedans and one minivan.	Government of Cuba	Non-acceptance would cause host government embarrassment.

[FR Doc. 00–6858 Filed 3–23–00; 8:45 am]

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Friday,
March 24, 2000

Part III

Department of Justice

Antitrust Division

United States v. Cargill, Incorporated; Public Comment and Plaintiff's Response; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 98–CV–1875 (GK)]

United States v. Cargill, Incorporated; Public Comment and Plaintiff's Response

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States of America hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *Cargill, Incorporated and Continental Grain Company,* Civil No. 98–CV–1875 (GK), filed in the United States District Court for the District of Columbia, together with the Untied States' response to the comments.

Copies of the comments and response are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW, Washington, DC 20530 (telephone: 202/514–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

In the matter of: United States of America, Plaintiff, v. Cargill, Incorporated, and Continental Grain Company, Defendants, Civil Action No. 99–1875 (GK).

UNITED STATES RESPONSE TO PUBLIC COMMENTS

Communications with respect to this document should be addressed to: Roger W. Fones, Chief; Donna N. Kooperstein, Assistant Chief; Robert L. McGeorge, Michael P. Harmonis, Attorneys; Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, NW, Washington, DC 20530, (202) 307–6361.

February 11, 2000.

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United States Response to Public Comments

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) (''AAPA''), plaintiff, the UNITED STATES OF AMERICA, acting under the direction of the Attorney General, hereby files comments received from members of the public concerning the proposed Final Judgment in this civil antitrust suit and the Response of the United States to those comments.

I. Factual Background

A. The Parties to the Transaction

Cargill, Incorporated (''Cargill'') and Continental Grain Company (''Continental'') are grain traders. They employ grain distribution networks—primarily composed of country elevators, rail terminals, river elevators, and port elevators—to buy grain from farmers and other suppliers, store it, and move it to their domestic and foreign customers. In addition, both firms are engaged in related businesses such as grain processing and cattle feeding.

B. The Proposed Acquisition

On October 9, 1998, Cargill entered into an agreement with Continental to acquire its gain trading business (conducted by Continental's Commodity Marketing Group). Cargill is not acquiring Continental's processing or finance divisions, which Continental will continue to operate as independent businesses after Cargill's acquisition of its grain trading business.

C. The Complaint

On July 8, 1999, the United States Department of Justice (the Department) filed a Complaint with this Court alleging that Cargill's acquisition of Continental's Commodity Marketing Group would substantially lessen competition for grain purchasing services in nine relevant markets, in violation of Section 7 of the Clayton Act (15 U.S.C. 18). In those markets, Cargill would have gained the power to artificially depress the prices paid to U.S. farmers and other suppliers for their grain and oilseed crops—including corn, soybeans, and wheat (collectively referred to as ''grain'').

The Complaint also alleged that the transaction would have resulted in Cargill and one other grain company controlling approximately eighty percent of capacity at the Chicago and Illinois River elevators that are authorized by Chicago Board of Trade (CBOT) to accept delivery for the settlement of corn and soybeans futures contracts.[1] That concentration would have increased the risk of manipulation of futures prices.

Finally, the Complaint alleged that a non-compete provision of the Cargill/Continental agreement was a division of markets in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. Because the Cargill/Continental acquisition agreement prohibited Continental from re-entering the grain distribution business for five years, the Complaint charged that it gave Cargill more time than would be reasonably necessary to gain the loyalty of former Continental suppliers and customers, and therefore, the agreement constituted an unlawful division of markets.

D. The Proposed Settlement

The Department, Cargill, and Continental filed a joint stipulation for entry of a proposed Final Judgment settling this action on July 8, 1999. In each of the nine markets where the Department has determined that the consolidation of competing Cargill and Continental grain elevators would give grain companies the power to artificially depress the price of grain that they pay farmers and other suppliers, the Final Judgment requires the divesture of either the Cargill grain elevator or the Continental grain elevator serving that

[1] For corn futures contracts, CBOT-authorized delivery points are located in Chicago and on the Illinois River as far south as Peoria; for soybean contracts, these facilities are in Chicago and along the entire length of the Illinois River.

market. The Final Judgment also requires divestitures of elevators on the Illinois River to ensure that concentration among firms controlling CBOT-authorized delivery points does not provide opportunities for manipulation of CBOT corn and soybean futures contracts.

Continental's divestitures to preserve competition for the purchase of grain from farmers and other suppliers include:

- Its river elevator at Lockport, Illinois;
- Its river elevator at Caruthersville (Cottonwood Point), Missouri;
- Its rail elevator at Salina, Kansas;
- Its rail elevator at Troy, Ohio;
- Its port elevator at Stockton, California; and
- Its port elevator at Beaumont, Texas.

Prior to entering into the proposed Final Judgment, Continental also terminated its minority interest in a river elevator at Birds Point, Missouri. Accordingly, no divestitures were required to protect competition in this market.

In order to protect against manipulation of CBOT futures markets, Continental was required to divest its Chicago port elevator.[2]

Cargill's divestitures to preserve competition for the purchase of grain from farmers and other suppliers were:

- Its river elevator at East Dubuque, Iowa;
- Its river elevator at Morris, Illinois; and
- Its port elevator at Seattle, Washington (with the option to retain its port elevator at Seattle if it does not acquire the Continental port elevator at Tacoma).

In addition, the Final Judgment requires Cargill to enter into a throughput agreement making one-third of the daily loading capacity at its Havana, Illinois River elevator available to an independent grain company to avoid undue concentration among firms controlling CBOT delivery points.[3]

The proposed Final Judgment also prohibits Cargill from acquiring any interest in the facilities to be divested by Continental pursuant to the proposed Final Judgment or the river elevator at Birds Point, Missouri in which Continental formerly held a minority interest.

Finally, the proposed Final Judgment prohibits the non-compete provision of the Cargill/Continental agreement from remaining in force for more than three years.

[2] Continental's divestiture of its Lockport river elevator is a remedy for concentration among authorized CBOT delivery stations, as well as remedy for concentration among grain buyers in that area.

[3] Cargill's divestiture of its Morris facility serves to protect against CBOT concentration problems, as well as concentration among buyers of grain in that market.

E. Compliance With Antitrust Procedures and Penalties Act

To date, the parties have compiled with the provisions of the Antitrust Procedures and Penalties Act as follows:

(1) The Complaint and proposed Final Judgment were filed on July 8, 1999;

(2) Defendants filed settlement pursuant to 15 U.S.C. 16(g) on July 19, 1999.

(3) The Competitive Impact Statement (''CIS'') was filed on July 23, 1999;

(4) The proposed Final Judgment and CIS were published in the **Federal Register** on August 12, 1999, 64 F.R. 44,046 (1999);

(5) A summary of the terms of the proposed Final Judgment and CIS was published in the *Washington Post,* a newspaper of general circulation in the District of Columbia, for seven days during the period August 10, 1999 through August 16, 1999;

(6) The sixty-day period specified in 15 U.S.C. 16(b) commenced on August 12, 1999 and terminated on October 12, 1999;

(7) The United States hereby files the comments of members of the public and the Nebraska Attorney General's amicus brief (bound separately as Appendix A) together with the Response of the United States to the comments and brief, pursuant to 15 U.S.C. 16(b); and

(8) The United States will move this Court for entry of the Final Judgment after the comments and the Response are published in the **Federal Register**. The Final Judgment cannot be entered before the publication. 15 U.S.C. § 16(d).

II. Legal, Standard Governing the Court's Public Interest Determination

Upon the publication of the public comments and this Response, the United States will have fully compiled with the APPA. After receiving the United States' motion for entry of the proposed Final Judgment, the Court must determine whether it ''is in the public interest.'' 15 U.S.C. 16(e). In doing so, the Court must apply a deferential standard and should withhold its approval only under very limited conditions. As Judge Greene observed in the *AT&T* case:

> If courts acting under the Tunney Act disapproved proposed consent decrees merely because they did not contain the exact relief which the court would have imposed after a finding of liability, defendants would have no incentive to consent to judgment and this element of compromise would be destroyed. The consent decree would thus as a practical matter be eliminated as an antitrust enforcement tool, despite Congress' directive that it be preserved.

United States v. *American Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd mem. sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983).

The United States Court of Appeals for the District of Columbia has noted that ''constitutional questions * * * would be raised if courts were to subject the government's exercise of its prosecutorial discretion to non-deferential review.'' *Massachusetts Sch. of Law at Andover, Inc.* v. *United States,* 118 F.3d 776, 783 (D.C. Cir. 1997) (citing *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1457–59 (D.C. Cir. 1995). Rather, the district court should review the proposed Final Judgment ''in light of the violations charged in the complaint and * * * withhold approval only [a] if any of the terms appear ambiguous, [b] if the enforcement mechanism is inadequate, [c] if third parties will be positively injured, or [d] if the decree otherwise makes 'a mockery of judicial power.' '' *Id.* at 783 (quoting *Microsoft* at 1462).

With this standard in mind, the Court should review the comments of members of the public concerning the proposed Final Judgment and the United States' Response to those comments. As this Response makes clear, entry of the proposed Final Judgment is in the public interest.

III. Summary of Public Comments

Sixty-seven individuals, eight public officials, and nineteen organizations expressed their views on the proposed Final Judgment. These comments and questions are summarized below.

Sixty-five individual farmers filed comments. Some are disappointed because they believe the transaction does nothing to raise the prices they receive when they sell their grain. Others are concerned that the markets in which they sell their grain have become so concentrated that the grain companies will be able to depress prices paid to farmers for their grain. Still others are concerned that Cargill will be able to monopolize ''specialty or niche'' markets or lessen competition in grain futures markets. Finally, some of the commenting farmers believe there should be a complete ban on mergers and acquisitions in the agribusiness sector.

Congresswoman Jo Ann Emerson, Missouri Attorney General Jeremiah Nixon, and several farm organizations, including the Missouri Farm Bureau Federation, Missouri Soybean Association, and Permiscot County Farm Bureau, addressed their comments to Section IV(D) of the proposed Final Judgment, which directs Continental to divest its river elevator at Cottonwood Point, Missouri, near Caruthersville. After noting that Bunge Corp. is one of

the major grain purchasers in the vicinity of Cottonwood Point, these commentators urge the Department of Justice not to permit divestiture of the Cottonwood Point facility to Bunge.

New Mexico Attorney General Patricia Madrid has no opposition to the proposed Final Judgment, although she is concerned about there being one less significant competitor in the national grain trading market after the transaction. Attorney General Madrid, therefore, urges the Department to actively advocate administrative and legislative actions that will invigorate competition in the agricultural sector of our economy.

Minnesota Attorney General Mike Hatch believes the proposed Final Judgment does not go quite far enough to ameliorate antitrust concerns raised by the transaction. He is concerned that grain markets are already too highly concentrated and that agriculture industries, in general, are experiencing high rates of vertical consolidation. Under the circumstances, Attorney General Hatch recommends that the proposed Final Judgment be modified to prohibit Cargill from acquiring any other of its competitors in grain export, transport, and storage markets.

Nebraska and South Dakota Attorneys General Don Stenberg and Mike Barnett the issue with the relevant geographic markets as defined in the Complaint. They believe the Department of Justice should not have focused on overlapping draw areas for country, rail, river or port areas, but rather suggest the relevant market should be enlarged to include the entire United States or even the rest of the world. Given that Cargill and Continental are two of our nation's largest grain trading companies, these—Attorneys General are of the view that the two firms should not be permitted to merge under any circumstances. In addition, Attorney General Stenberg's comments in his amicus brief mirror many of the concerns expressed by the Organization for Competitive Markets, discussed *infra.*

North Dakota Attorney General Heidi Heitkamp filed a comment expressing her appreciation for the ways in which this law suit has preserved competition for farmers at the local level in North Dakota. She, nevertheless, remains concerned about powerful concentrations of agribusiness firms that North Dakota farmers must face. Based on that concern, she suggests that the Department should reconsider the adequacy of divestitures required by the proposed Final Judgment and instead, seek to enjoin the transaction in its entirety. In particular, Attorney General Heitkamp thinks the time has come to rethink antitrust analysis in the farm sector to give greater consideration to non-economic concerns.

John W. Helmutch, an agricultural economist, filed a comment that set forth his suggested analytical framework for the Department's use in analyzing the transaction. In his view, it is essential for the Department to assess market concentration, the extent of information available to grain traders and farmers in the market, and the potential adverse competitive effects on grain futures markets and other agribusinesses beyond grain trading, such as livestock markets. Mr. Helmuth asks if we have made these assessments.

A.V. Krebs believes the Department's analysis is deficient because it fails to consider whether the transaction will permit Cargill to force its own standards, practices, marketing arrangements, and prices on farmers, processors, and merchandisers in grain markets throughout the United States.

Professor C. Robert Taylor of Auburn University is concerned that the Department did not adequately consider the extent of vertical integraiton in the agricultural sector. Minnesota and Nebraska Attorneys General Mike Hatch and Don Stenberg and Catholic Charities of Sioux Cit, Iowa voice the same concernin their comments.

Jon Lauck, writing on behalf of the Organization for Competitive Markets (''OCM''), filed a comment that was critical of the Department's analysis in several respects. OCM states that the Department's analysis failed to consider: (1) The impact of concentration in agriculture markets other than grain buying; (2) the continuing potential for anticompetitve behavior in the post-merger market; (3) whether the divested facilities will continue to be competitive forces in the hands of new owners, particularly if the new owners do not have a ''network'' of elevators that buy grain; (4) the impact on potential entry into grain buying markets; (5) the ramifications of competition in overseas grain markets; (6) the implications of economic disorganization of farmers which can be exploited by powerful buyers; (7) information disparities in agriculture markets; (8) the lack of benefits of the merger; (9) a range of statutes that Congress intended courts to consider when making decisions about agriculture markets; and (10) that the consent decree risks leaving farmers without an effective outlet for legal redress. OCM's conclusion is that the proposal Final Judgment is not an adequate remedy and that the transaction should be prohibited in its entirety.

Several farm, rural-life, and religious groups voice concerns about general levels or market concentration in agriculture industries. These groups include the American Agriculture Movement, Animal Welfare Institute, Clean Water Action Alliance, Farmland Co-op Inc., Institute for Agriculture and Trade Policy (''IATP''), Kansas Cattlemen's Association, Minnesota Catholic Conference, National Catholic Rural Life Conference, and the Office of Hispanic Ministry. In the main, they believe the Department's analysis does not adequately consider concentration in agriculture markets beyond grain buying. In their view, these non-grain markets are already too concentrated, and so Cargill ought not be permitted to acquire Continental under any circumstances.

The Kansas chapter of the National Farmers Organization (NFO) expressed concern about declining grain ''basis levels.'' Thus, they are concerned that Kansas farmers will receive lower prices for their grain after the transaction. The Kansas NFO did not address the adequacy of the proposed Final Judgment.

National Farmers Union (''NFU'') filed comments opposing the transaction because the transaction does not increase competition in grain markets. NFU also believes the proposed Final Judgment is deficient because it does not ensure that divested facilities will remain competitive. NFU also believes the proposed Final Judgment fails to address the roles played by Cargill and Continental in export markets.

Rural Life Office of Dorchester, Iowa expressed concern that the transaction may facilitate Cargill's exercise of market power in ''organic and specialty'' markets.

Women Involved in Farm Economics (''WIFE'') is concerned that the transaction as proposed, by unifying the second and third largest grain traders in Nebraska, might depress grain prices to Nebraska farmers and permit Cargill to control their export market. WIFE did not object to the proposed Final Judgment.

IV. The Department's Analysis of the Transaction

We begin our response to public comments with an overview of the legal standards for analyzing mergers and acquisitions, our investigation of Cargill's proposed acquisition of Continental's commodity marketing business, and our analysis of the relevant competitive issues in this case. Thereafter, we respond to specific points raised by commentators.

A. The Relevant Merger Law

Section 7 of the Clayton Act, 15 U.S.C. 18, prohibits mergers and acquisitions whose effect may be substantially to lessen competition ''in any line of commerce * * * in any section of the country.'' The purpose of Section 7 is to prevent acquisitions or mergers before they create harm. '' 'The intent here * * * [is] to cope with monopolistic tendencies in their incipiency and well before they have attained such effects as would justify a Sherman Act proceeding.' '' *Brown Shoe Co.* v. *United States,* 370 U.S. 294, 318 n. 32 (1962) (quoting S. Rep. No. 81–1775 at 4–5).

The antitrust laws apply to the exercise of market power over sellers (monopsony power), just as they do to the exercise of market power over buyers (monopoly power).[4] *See Mandeville Island Farms* v. *American Crystal Sugar Co.* 334 U.S. 219, 235–44 (1948) (a case arising under Sections 1 and 2 of the Sherman Act). Section 7, in particular, applies to monopsony power gained via acquisitions or mergers. *See United States* v. *Rice Growers Ass'n of California,* 1986 WL 12562 (E.D. Cal. 1986) (acquisition by one miller of another found to lessen competition in purchase of California paddy rice); *United States* v. *Pennzoil Company,* 252 F. Supp. 962, 981–985 (W.D. Pa. 1965), (merger found to lessen competition in purchase of Penn Grade crude oil).

To predict whether an acquisition may substantially lessen competition or tend to create a monopoly, the reviewing court must determine: (a) The ''line of commerce'' or product market in which to assess the transaction, (b) the ''section of the country'' or geographic market in which to assess the transaction, and (c) the acquisition's probable effect on competition in the product and geographic markets. The probable effect often can be assessed by determining the level of concentration based on the market shares of the parties to the proposed transaction and their competitors in the product and geographic markets. *See United States* v. *Philadelphia National Bank,* 374 U.S. 321, 362–63 (1963).

[4] As noted in the U.S. Department of Justice/Federal Trade Commission's *Horizontal Merger Guidelines* § 0.1 (issued 1992, revised 1997): ''The unifying theme of the Guidelines is that mergers should not be permitted to create or enhance market power or to facilitate its exercise. Market power to a seller is the ability profitably to maintain prices above competitive levels for a significant period of time * * * Market power also encompasses the ability of a single buyer (a 'monopsonist'), a coordinating group of buyers, or a single buyer, not a monopsonist, to depress the price paid for a product to a level that is below the competitive price * * *''

B. Framework for the Department's Competitive Analysis

As the case law suggests, the core issue in competition analysis is whether the proposed transaction likely would create or enhance market power or facilitate its exercise. This investigation focused on both monopoly and monopsony issues (that is, whether Cargill would likely gain market power through its acquisition of Continental's grain trading business in its roles as a seller or as a buyer of grain).

1. Monopoly Analysis

The *Horizontal Merger Guidelines,* which outlines the Department's enforcement policy for horizontal acquisitions and mergers subject to Section 7 of the Clayton Act, define market power in monopoly situations as the ability of a seller profitably to maintain prices above competitive levels (or to reduce quality or service below competitive levels) for a significant period of time. *Horizontal Merger Guidelines* at § 0.1. An acquisition can facilitate the exercise of market power by increasing the likelihood of coordinated interaction among competing firms or by creating a market structure in which firms find it profitable to unilaterally raise prices or reduce output. *See id.* at § 2.

To determine whether the proposed acquisition would create, enhance or facilitate the exercise of market power, Department staff first had to define the markets within Cargill and Continental compete. Under the *Horizontal Merger Guidelines*, a market is defined as a set of products or services within a geographic area such that a hypothetical monopolist could profitably impose a ''small but significant and nontransitory'' price increase or decrease. *Id.* at § 1.0.

If the evidence shows that a hypothetical monopolist of any given product or service profitably could impose such a price increase, that product or service is defined as the relevant product market. *Id.* at 1.11. If, on the other hand, the evidence shows that a sufficient number of customers would substitute other products or services to make such a price increase unprofitable, those products or services are also included in the product market. *Id.* This process continues until a group of products or services is identified for which a small but significant and nontransitory price increase would be profitable. *Id.*

Similarly, if the evidence shows that a hypothetical monopolist of the relevant product or service could impose such a price increase in any given region, that region is defined as the relevant geographic market. *Id.* at 1.21. If, on the other hand, the evidence shows that a sufficient number of customers would switch to products or services provided at locations outside the region to make such a price increase unprofitable, those locations are also included in the geographic market. *Id.* This process continues until a group of locations is identified for which a small but significant and nontransitory price increase would be profitable. *Id.*

Once the relevant product and geographic markets are defined, Department staff must evaluate the competitive impact of the proposed acquisition. A merger is likely to be problematic if the merged firms are two of a relatively small number of sellers in the market. Under these circumstances, the merged firm may gain unilateral power to raise prices, or the existence of only a few other firms in the market may facilitate tacit collusion.

2. Monopsony Analysis

As a general proposition, the analysis of competitive issues in monopsony cases is the mirror image of the more common analysis of competitive issues in monopoly cases.[5] For example, instead of determining whether the merging firms are two of a small number of sellers in the relevant product and geographic market, and whether the merged firm would gain sufficient market power to raise prices to consumers, monopsony analysis focuses on whether the merging firms are two of a small number of buyers in the relevant product and geographic market, and whether the merged firm would gain sufficient market power to depress prices paid to its suppliers. Likewise, instead of determining whether the buyers could defeat an attempt by a monopolist to increase prices by a small but significant and non-transitory amount by switching to alternative products or alternative suppliers, the issue in a monopsony investigation is whether the sellers could defeat an attempt by a monopsonist to depress prices by producing other products or by selling their products to more distant buyers.

[5] As noted in Section 0.1 of the *Horizontal Guidelines:* ''The exercise of market power by buyers ('power') has adverse effects comparable to those associated with the exercise of market power by sellers. In order to assess potential monopsony concerns, the Agency will apply an analytical framework analogous to the framework of these Guidelines.''

C. Overview of the Department's Analysis of Competitive Issues in This Transaction

1. Background

Cargill and Continental are international grain traders, and so the Department's investigation encompassed grain markets throughout the world. In the course of this investigation, conducted by a team of approximately twenty lawyers, paralegals, and economists, the Department's staff: reviewed over 400 boxes of documents furnished by Cargill and Continental pursuant to our second request discovery procedures; deposed Cargill and Continental executives; reviewed relevant legal and economic literature; consulted with officials of the Department of Agriculture, the Commodity Futures Trading Commission, and state attorney general offices; and interviewed over one hundred farmers, farm organization officials, agricultural economists, grain company executives, and other individuals with knowledge of the industry and competitive conditions.

The Department's staff found that grain typically moves from farms to country elevators, from which it moves to river elevators and rail terminals, and then to domestic purchasers or to port elevators for export to the rest of the world. We found that Cargill and Continental often compete with each other at various stages of their grain distribution networks as they buy, store, distribute, and sell agricultural commodities. Accordingly, the investigation encompassed all aspects of their worldwide grain businesses in order to identify any portions of their respective grain distribution networks where they compete with each other.

In our investigation, we focused on the use of these grain distribution networks to facilitate four different aspects of the grain business:

1. Selling standard grades of grain (Primarily, corn, wheat and soybeans);

2. Selling less widely-traded grain products (super commodities, special commodities, and other niche products);

3. Buying grain; and

4. Providing elevator services at delivery facilities that are designated by the CBOT for the settlement of corn and soybean futures contracts.

As to the first two categories, the investigation indicated that the transaction would not create market power in the sale of these products; and very few of the public comments dealt with these aspects of the grain business. Most of the comments concerned the Department's conclusions on the third and fourth aspects of the Cargill and Continental grain businesses.

2. Analysis of Cargill as a Seller of Standard-Grade Grain Products

Cargill and Continental compete in a national (or international) market in their roles as sellers of standard agricultural commodities. Although they are big grain companies in absolute terms, they have relatively small shares of the output markets in which they compete. One way to assess concentration among grain traders is grain storage capacity.[6] By this measure of concentration, collectively they had less than eight percent of total U.S. off-farm grain storage capacity—before the divestitures required by the Final Judgment.[7]

Food processors, cattle feeders, and other buyers of agricultural commodities rely upon competition among a fairly large number of big grain companies with nationwide grain distribution networks and nearby regional grain companies to ensure competitive prices. Commodity prices tend to be fairly consistent in grain companies' output markets throughout the country when adjusted for transportation costs. With these competitive conditions, it was not surprising that the officials from cereal companies, bakers, and other buyers of wheat, corn, and soybeans whom we interviewed consistently indicated that they thought the transaction would not give Cargill the power to raise prices for standard commodities.

In summary, our investigation determined that the relevant geographic market for grain companies' sale of grain is at least as broad as the national market. With a combined Cargill/Continental share of less than eight percent of that market, it is highly unlikely that this transaction could create or enhance market power for sellers of these commodities to any appreciable degree.

3. Analysis of Cargill as a Seller of Speciality Products

Although we concluded that this transaction would not give Cargill or other grain companies market power as a seller of standard grade grain products, we considered the possibility that Cargill and Continental might be two of a relatively small number of sellers of less widely-traded commodities and that the consolidation of these business might give Cargill market power as a seller of these products. Niche grain products include super commodities (crops with specific characteristics, such as high oil content corn), special commodities (crops that are not widely traded, such as white corn), and organic crops.

Our investigation determined, however, that there are no niche product market sin which Cargill and Continental are two of a relatively small number of competitors. Consequently, we concluded that the transaction will not create opportunities for Cargill to gain sufficient market power to raise the prices on any of the niche products that it sells.

4. Analysis of Cargill as a Buyer of Grain

Although Cargill and Continental compete for the sale of grain in national and international markets, our investigation revealed that they compete for the purchase of grain in relatively small local or regional markets. Shipping grain by truck is relatively costly and time-consuming. Farmers, therefore, tend to truck their grain within limited geographic areas surrounding their farms—usually to buyers who operate nearby country elevators or to buyers who operate river, rail or port elevators if their farms are fairly close to those facilities. Operators of river elevators and rail terminals may transport grain farther distances to buyers who operate port elevators and domestic processing plants—reflecting the relatively low cost of transporting bulk commodities long distances by rail or barge as compared with truck transportation. The draw area of one grain company's country, river, rail or port elevator overlaps the ''draw area'' of a competing elevator if their facilities are close enough to each other so that the costs of shipping grain to the two elevators are not significantly different.

During the course of our investigation, the Department reviewed every local or regional market in which Continental competed with Cargill for the purchase of grain before the transaction. Department staff began this process by identifying every geographic market in which Cargill and Continental operate facilities with overlapping draw areas.[8] We then determined how many grain companies other than Cargill and

[6] Market share data is difficult to obtain and not entirely reliable in this industry. One limitation of this measure of concentration is the ''double counting'' problem that occurs when a firm handles the same bushel of grain several times—for example, when it buys wheat at a country elevator, transfers it to its rail terminal and subsequently its flour mill, and sells it to a baker.

[7] See section V(B) of this Response.

[8] At this stage of the process, we eliminated only the Continental elevators that are located so far away from the nearest Cargill elevator that it is inconceivable that the Continental elevator and nearest Cargill elevator might be drawing an appreciable amount of grain from the same farmers.

Continental operated grain elevators in each of those markets and conducted detailed and specific analyses of all of the approximately three dozen local or regional markets that are served by less than twelve grain company elevators. The analysis for each of these geographic markets included interviews of farmers, officials of farm organizations, independent elevator operators, and other people with knowledge of these local and regional markets, determinations of local or regional grain transportation costs, and other relevant information about competitive conditions in these markets. We concluded that sufficient numbers of competitive grain buyers would remain after the consolidation of the Cargill and Continental elevators in most of those local or regional markets to make it highly unlikely that grain companies could gain the power to depress the prices they pay for grain.

In nine local or regional markets, however, farmers located within the overlapping Cargill/Continental draw areas depend on competition among Cargill, Continental, and only a few other grain companies to obtain a competitive price for their grain. Cargill's acquisition of Continental's elevators in these markets, therefore, could create sufficient market power to enable the few grain companies competing in those markets to depress grain prices.

Sections VI and VII of the Complaint refer to these overlapping Cargill/Continental draw areas as ''captive draw areas.'' This term identifies highly concentrated markets in which Cargill and Continental are two of a relatively small number of grain buyers and in which the transaction is likely to create or enhance monopsony market power for: operators of port elevators in the Pacific Northwest port range; operators of port elevators in the central California port range; operators of port elevators in the Texas Gulf port range; operators of river elevators along the Illinois and Mississippi rivers; and operators of rail terminals in the vicinities of Salina, Kansas and Troy, Ohio.

In order to prevent the loss of competition for the purchase of grain that would result from Continental's exit from these markets, the Department insisted that Cargill divest either its elevator or Continental's elevator in the markets to a new entrant who would operate the facility as a grain elevator and compete for the purchase of grain from farmers in the facility's draw area. Cargill and Continental have divested, or are in the process of divesting, the following facilities:

Continental Facilities	*Acquirer*
Lockport, IL river elevator.	Louis Dreyfus Corporation.
Caruthersville, MO river elevator.	Louis Dreyfus Corporation.
Salina, KN rail elevator.	Declined to renew its lease.
Troy, OH rail elevator.	Mennel Milling Company
Beaumont, TX port elevator.	Louis Dreyfus Corporation.
Stockton, CA port elevator.	Penny Newman Grain Co.
Birds Point, MO river elevator[9].	Terminated minority interest.
Cargill Facilities	*Acquirer*
East Dubuque, IL river elevator.	Consolidated Grain & Barge.
Morris, IL river elevator.	Louis Dreyfus Corporation.
Seattle, WA port elevator.	Louis Dreyfus Corporation.

[9] The proposed Final judgment does not require a divestiture of the Birds Points facility since Continental terminated its minority interest in that facility before the execution of that settlement agreement.

5. Analysis of Cargill as an Operator of River Elevators Designated by CBOT for Settlement of Futures Contracts

Our investigation indicated that the acquisition would give Cargill and one other firm approximately 80% of the authorized delivery capacity for settlement of CBOT corn and soybeans futures contracts. In the light of these market shares and other market information, we determined that Cargill's acquisition of Continental would make it easier for Cargill unilaterally, or in coordination with the few remaining firms in the corn and soybean futures markets, to manipulate corn and soybean futures contracts in violation of section 7 of the Clayton Act.

The divestitures of Continental's Lockport river elevator and Cargill's Morris river elevator are needed to prevent the loss of competitors that otherwise would have occurred as a result of consolidation among operators of delivery facilities authorized for the settlement of CBOT corn and soybean futures contracts. Further divestitures required by the Final Judgment to remedy these concerns include Continental's Chicago port elevator and one-third of the capacity of Cargill's river elevator at Havana, Illinois.

6. Summary of the Department's Competitive Analysis

In summary, the Department found that Cargill's acquisition of Continental's Commodity Grain Marketing Group, as originally structured, would violate the antitrust laws. Cargill's acquisition of grain elevators in nine local or regional markets in which there are relatively small numbers of elevators operated by other grain companies would have created or enhanced the ability of grain companies to exercise monopsony powers in those geographic markets. Cargill's acquisition of Continental's CBOT-authorized delivery points would have resulted in undue concentration of these facilities and increased opportunities for manipulations of CBOT futures markets. And, the non-compete provision of the Cargill/Continental agreement would have harmed competition by unduly restricting Continental's right to re-enter the grain trading business in the future.

The Department has concluded that the restructuring of the transaction as required by the proposed Final Judgment resolves these competitive concerns. The divestitures required by the Final Judgment should preserve the competitive conditions that existed before the acquisition and ensure that farmers in the affected markets will continue to have effective alternatives to Cargill when selling their crops. The entry of new operators of CBOT-authorized delivery stations should prevent manipulation of CBOT corn and soybean futures markets. And, the requirement that the non-compete provision of the Cargill/Continental agreement remain in force for no more than three years should ensure that Cargill does not preclude continental's re-entry into the grain distribution business for longer than is required to give Cargill a fair opportunity to gain the loyalty of former Continental suppliers and customers.

V. The Department's Responses to Specific Comments

We now turn to the comments that raise questions about our analysis or that suggest relief different or supplemental to that contained in the proposed Final Judgment. Copies of this Response without appendix are being mailed to all who filed comments.

A. Remedy

Several commentators questioned whether the acquirers of the divested facilities would be competitive.[10] The proposed Final Judgment sets forth procedures designed to ensure that the firms that acquire the divested facilities will vigorously compete to buy grain from farmers in their geographic markets.

Pursuant to the proposed Final Judgment, Cargill and Continental provided widespread notice of the availability of the facilities that they were required to divest in newspapers

[10] Minnesota Attorney General Mike Hatch, South Dakota Attorney General Mark Barnett, National Farmers Union, and Western Organization of Resource Councils.

of general circulation, provided appropriate information concerning these facilities to prospective acquirers, and submitted reports to the Department concerning these inquiries and subsequent negotiations. They received over one hundred written expressions of interest in the facilities to be divested,[11] and now have entered into definitive agreements to divest all of the facilities that they were required to transfer to new entrants under the terms of the Final Judgment.

To ensure that the new entrants have the capability to compete with Cargill and other incumbent grain companies in their markets, the United States reviewed the proposed divestiture agreements, obtained further information from the proposed acquirers, and conducted an independent investigation into the background and capabilities of the proposed acquirers. Under the Final Judgment, the United States has the sole right to disapprove any prospective acquirer if it concludes that the proposed acquirer might not operate the divested facility as part of a viable, ongoing business. The Department's investigation indicated that each of the proposed acquirers has the financial capability, expertise, and incentive to become a vigorous, independent competitor in the relevant market. Louis Dreyfus and Consolidated Grain & Barge are major grain companies who will use these acquisitions to expand into markets that they do not presently serve. Mennel and Penny Newman are smaller, but they are experienced grain traders who presented sound business plans for assimilating the Troy rail elevator and Stockton port elevator in their respective grain distribution businesses.

In summary, the divested facilities will be controlled by new entrants with the background, expertise, and incentive to compete effectively for the purchase of grain produced in these markets. With these divestitures, therefore, it is not likely that this transaction will create or enhance the exercise of market power by Cargill or other grain companies enabling them to depress prices paid to farmers for their crops in any market.[12]

For the divestitures required to forestall undue concentration among firms who control river elevators designated for the settlement of CBOT corn and futures contracts, the Department insisted on additional criteria. We required that the proposed acquires (Louis Dreyfus at Morris and Lockport, NIDERA at Chicago, and Prairie Central at Havana) demonstrate that they satisfy all requirements for obtaining CBOT designation as an authorized delivery point (including CBOT's financial standards) in addition to the criteria established for the other divestitures.

Turning to one specific local market, Congresswoman Jo Ann Emerson, several farm groups, and one individual farmer in southeastern Missouri cautioned against allowing Bunge Corp, to acquire the Continental river elevator at Caruthersville (Cottonwood Point), Missouri because Bunge is already one of the major grain buyers in that local market.[13] The United States agrees with their analysis. Bunge will not acquire that facility; instead it will be acquired by Louis Dreyfus.

B. Market Definition

Several commentators argue that the United States failed to recognize that Cargill and Continental operate on a national scale and to realize that this transaction would concentrate the national grain market for the purchase and sale of grain.[14] We believe that we used the correct market definitions in our competitive analysis.

Under standard antitrust analysis (as applied to monopsony cases), we determine the boundaries of relevant geographic markets by determining whether it would be profitable for the only buyer of grain in the geographic market to depress the price that farmers receive for their grain by a small, but significant, and non-transitory amount. In this case, the farmer's alternatives when he looks for buyers of his crops include the closest grain buyer and other buyers located relatively near the closest buyer.[15] In most markets, we found that the additional trucking costs would preclude farmers from shipping their crops more than about twenty to thirty miles beyond the nearest grain elevator to get a small, but significant, increase in the price paid for his grain.

In this case, therefore, it was appropriate to focus our monopsony analysis on local or regional markets consisting of areas in which: (a) Cargill and Continental had elevators that were close enough to each other to compete for the purchase of grain originating in their overlapping draw areas; and (b) there were a relatively small number of competitors near enough to the Cargill and Continental facilities to be reasonable outlets for farmers located in the overlapping Cargill/Continental draw areas. These are the markets in which the transaction could create market power if too few competitors remained after Cargill acquired nearby Continental grain elevators.

Our investigation began with an examination of all local or regional markets in which Cargill and Continental operated grain elevators that were close enough together to compete for the purchase of grain from the same farmers. After eliminating the local or regional markets served by relatively large numbers of other grain company elevators, we found that Cargill and Continental were two of a relatively small number of grain companies who competed for the purchases of grain in nine local or regional markets and concluded that the transaction would have created monopsony market power in those markets.

Not one of the comments that we received indicated that we overlooked a specific local or regional market in which the transaction was likely to create competitive problems. Instead, the commentators who said that we overlooked a relevant geographic market directed our attention to national, international or export markets.

If the relevant geographic market were nationwide, we would have been forced to conclude that the transaction is not likely to lessen competition among grain buyers. Using total U.S. off-farm grain elevator capacity as a measure of market share in the grain distribution industry, Cargill had about a 5.7% share of the market and Continental about 1.2%

[11] As a further indication of widespread interest in the divested facilities, the number of potential acquirers who obtained detailed information pursuant to confidentiality agreements ranged from thirteen (for the Seattle port elevator) to twenty-one (for the Morris and Caruthersville river elevators).

[12] Antitrust relief should '' 'cure the ill effects of the illegal conduct, * * * assure the public freedom from its continuance,' * * * and it necessarily must 'fit the exigencies of the particular case.' '' *See Ford Motor Company* v. *United States,* 405 U.S. 562, 575 (1972) (quoting *United States* v. *United States Gypsum,* 340 U.S. 76, 88 (1950)) and *International Salt Co.* v. *United States,* 332 U.S. 392, 401 (1947)). The proposed Final Judgment meets these criteria by preserving competition in domestic grain markets, as it existed prior to the transaction. In the absence of any evidence to indicate that the transaction raises antitrust concerns elsewhere, there is no basis for prohibiting Cargill ''from acquiring any other direct competitors in grain export, transport, and storage markets,'' as suggested by Minnesota Attorney General Mike Hatch. If Cargill were to attempt to acquire competitors in additional markets, the Department will have the opportunity to investigate those acquisitions and to seek remedies for any transactions that violate the antitrust laws.

[13] Missouri Farm Bureau Federation, Missouri Soybean Association, Pemiscot County Farm Bureau, and Clyde Southern.

[14] Nebraska Attorney General Don Stenberg, South Dakota Attorney General Mark Barnett, National Farmers Union, WIFE, and Reena Kazmann.

[15] The cost of shipping grain from farm to grain elevator is more relevant than the distance from farm to grain elevator, but cost and distance are roughly proportionate to each other in most cases.

before the transaction (and before the combined capacity was reduced by the divestitures required under the Final Judgment).[16] The combined share of less than eight percent of the market is far below any appropriate threshold for suggesting that this transaction is likely to significantly lessen competition among grain buyers. Thus, the combined Cargill/Continental share of the national grain market masks the anticompetitive effects of this transaction, as originally structured, at the local or regional level.

Other commentators suggest that the U.S. grain export market may be a relevant market.[17] Cargill and Continental are two of the United States' largest agricultural exporters (with combined export market shares of about 40% for corn, 30% for soybeans, and 25% for wheat); but, U.S. export market shares are not meaningful indications of concentration in any relevant grain output market.The customers for Cargill and Continental U.S. grain exports (*i.e.,* grain buyers in foreign countries) rely on competition among relatively large numbers of U.S. and foreign grain sellers. These sellers include Cargill, Continental, other big international grain traders, such as Bunge, Louis Dreyfus, Peavey (a division of ConAgra), and ADM, smaller regional grain traders, and (in most cases) their own domestic producers. With such large numbers of competing sellers in these markets, it is not likely that this transaction will create or enhance monopoly market power.

Cargill and Continental port elevators were a major focus of our investigation, but not because of their impact on buyers in foreign markets. We devoted substantial efforts to the investigation of this level of the Cargill and Continental grain distribution networks because: (a) In several port ranges, they compete with each other for the purchase of grain from farmers and other suppliers in their port elevators' overlapping draw areas; and (b) there are relatively small numbers of other grain companies in some of those port ranges. In fact, we found competitive problems requiring the divestiture of four of Continental's six port elevators.

[16] The *1999 Grain & Milling Annual* estimates total U.S. off-farm grain storage capacity to be 7,938,190,000 bushels. *Id.* at 7. Cargill had total capacity of 452,399,560 bushels; Continental 169,346,000 bushels. *Id.* at 21, 22. The combined Cargill/Continental capacity is 7.83% of total U.S. off-farm grain storage capacity.

[17] Nebraska Attorney General Don Stenberg, South Dakota Attorney General Mark Barnett, National Farmers Union, and WIFE.

C. Cargill's Power Over Price

Many of those who file documents are concerned that Cargill may have the power to depress grain prices paid to farmers after it acquires Continental.[18] We too had that concern, and as explained in section IV of this memorandum, we concluded that the acquisition as originally proposed would have adversely affected farmers in local or regional markets who had no reasonable choice but to sell their grain to Cargill, Continental, and only a few other grain companies. As explained in section V(A) of this memorandum, the divestitures required by the proposed Final Judgment protect those farmers. Only if the Court were not to require the divestitures set forth in the proposed Final Judgment would grain companies gain the power to depress prices paid to farmers and other suppliers in these markets.[19]

D. Futures Markets

Several comments stated that the United States failed to consider the impact of the transaction on futures markets.[20] In fact, we devoted considerable attention to that issue. Our analysis of the futures issue included reviews of all agricultural futures markets and economic literature on the subject, interviews of farmers, farm organization officials, grain company executives, and other people who rely on futures markets, and extensive consultations with officials from the Commodity Futures Trading Commission (CFTC).

We concluded that the transaction, as originally structured, would have given Cargill and Archer Daniels Midland Co. (ADM) approximately eighty percent of the delivery capacity for the settlement of CBOT corn and soybean futures contracts, thereby increasing opportunities for manipulation of those futures markets. Under the transaction, as originally structured, Cargill would have acquired eight Continental elevators that were authorized to accept deliveries for the settlement of CBOT corn and soybean futures contracts. The proposed Final Judgment requires the divestiture of three CBOT-authorized delivery stations on the northern portion of the Illinois river—Continental's port elevator at Chicago, Continental's river elevator at Lockport, and Cargill's river elevator at Morris. In addition, Cargill is required to make one-third of its loading capacity at a fourth facility—its Havana river elevator—available to an independent grain company under a throughput agreement in order to gain an additional facility on the southern portion of the Illinois River for the settlement of soybean futures contracts.

During our review of the divestitures proposed by Cargill and Continental, we reviewed the prospective acquirers' backgrounds to ensure that they had the requisite financial and operational capabilities and incentives to become vigorous independent competitors. In cooperation with officials from the CFTC, we also obtained credible assurances that the acquirers could obtain CBOT authorization to accept deliveries in settlement of corn and soybean futures contracts. The Department concluded that the divestitures will leave sufficient CBOT-authorized delivery capacity in the control of firms other than Cargill and ADM to protect against manipulation of CBOT corn and soybean futures markets.

E. Specialty Markets

Several commentators indicated that the United States failed to consider whether the transaction would enable Cargill to monopolize speciality or niche commodity markets.[21] As noted in section IV(B)(3) of this Response, we did study this issue, but our investigation

[18] Nebraska Attorney General Don Stenberg, South Dakota Attorney General Mark Barnett, Animal Welfare Institute, National Catholic Rural Life Conference, and Office of Hispanic Ministry, Greta Anderson, Vivian Anderson, Kay Barnes, Isabelle Barth, Mary Beckrich, Amanda Bray, Loris von Brethorst, Marilyn Borchardt, Mike Callicrate, G.M. Carlson, Mary Casserand, Laurie Chancellor, Donald B. Clark, Roger and Shari Cummings, Peggy B. Daugherty, Lyman and Darline Denzer, Steve Dewell, C.K. Dresae, Llewellyn and Karen Engelhart, Dan and Judy Gotto, Bob Gregory, Mary Hargrafen, Minnesota AG Mike Hatch, Veron E. Heim, John W. Helmuth, Barbara Hook, Jeff Horejsi, Robin Kleven, Riley Lewis, Todd Lewis, Lawrence Marvin, Margot Ford McMillen, Darlene Milbradt, Winton Nelson, Jennifer Poole, Rae Powell, Lois Shank, Lyle D. Spencer, Ellen Stebbins, Elenor Steburg, Daniel J. Swartz, and Professor C. Robert Taylor.

[19] A.V. Krebs posed the question whether farmer and others who deal with Cargill will be forced to conform to Cargill's standards for marketing grain after the acquisition. The answer is no. The proposed Final Judgment ensures that the transaction will not create or enhance the ability of Cargill to exercise market power in domestic grain markets. Absent market power, Cargill cannot impose its will on the firms with whom it does business.

Several individual farmers and the National Farmers Union oppose the acquisition because it will not have the effect of increasing prices or competition in grain markets. The goal of antitrust is to prevent transactions that would reduce existing competition. The antitrust laws provide no legal basis for using the power to challenge proposed mergers to *increase* competition in any market.

[20] Minnesota Attorney General Mike Hatch, John W. Helmuth, and Keith Mudd.

[21] Minnesota Attorney General Mike Hatch, Rural Life Office, Office of Hispanic Ministry, and Roger and Shari Cummings.

produced information showing that the transaction would not create or enhance market power in any markets for the purchase or sale of niche products (including super commodities, special commodities, and organic grain products).

In summary, our investigation uncovered no niche product market in which Cargill and Continental were two of a relatively small number of buyers or sellers. Our investigation, which encompassed all niche products handled by either Cargill or continental, revealed that either: (a) They did not compete with each other before the transaction or (b) there were sufficient numbers of other grain companies in the market to deny Cargill the opportunity to gain monopoly or monopsony market power.

F. Nebraska Grain Markets

Several members of the WIFE organization in Nebraska expressed concern about the ability of Cargill to depress prices paid to Nebraska farmers. As mentioned previously, the main focus of our competitive analysis was to determine whether the transaction was likely to create sufficient market power for Cargill to depress prices paid to farmers in any local or regional market. Since our preliminary investigation identified several markets in Nebraska in which Cargill and Continental compete for the purchase of grain, we devoted considerable attention to local markets within he state. After conducting numerous interviews with farmers and farm organizations in those areas, calculating local grain transportation costs, and considering other relevant competitive data, however, we concluded that there were no local markets in Nebraska in which Cargill and Continental were two of a relatively small number of competitors for the purchase of grain. In each Nebraska market where Cargill and Continental compete with each other for the purchase of grain, we found that there were sufficient numbers of alternative nearby buyers remaining after the Cargill/Continental consolidation to defeat any attempt by grain companies to depress prices paid to farmers in those areas. Accordingly, we did not seek divestitures of any grain elevators in Nebraska.

G. Concentration in Other Agriculture Markets

Some comments express concern over concentration in markets other than grain—for example, markets pertaining to beef and pork packing, cattle feedlots, broiler and turkey production, animal feed plants, flour and corn milling, soybean crushing, and ethanol production.[22] The comments suggest that the Department's analysis of the Cargill transaction may be deficient because it fails to give due consideration to these and other agriculture markets.

The Department disagrees. No facts have arisen that lead us to believe that Cargill's acquisition of Continental will harm competition in markets other than those identified in the Complaint.

The Department filed the Complaint and entered into the proposed Final Judgment after an extensive investigation. During this investigation, we examined competition and the likely effects of the transaction in every market where both Cargill and Continental provide competing products or services. We focused on the grain and grain futures markets alleged in the Complaint because these are the markets in which Cargill and Continental compete with each other and the markets in which competition could diminish after this transaction.

We are aware of other agribusiness industries in which one or both firms operate—including beef and pork packing, broiler and turkey production, flour and corn milling, soybean crushing, cattle feedlots, animal feed plants, and ethanol—but none of these industries is affected by the transaction since Continental is not selling its processing division to Cargill. Having carefully reviewed the facts, the Department has found no reason to believe that the transaction would have an adverse impact on competition in markets other than the grain markets alleged in the Complaint.

H. Ban on All Agribusiness Mergers

Some commentators suggest that current concentration levels in agriculture markets justify an absolute ban on mergers and acquisitions in the agriculture sector.[23] The antitrust laws provide no legal basis for such a ban, and the Department has no power to prevent the consummation of any transaction except to prevent or cure specific violations of the antitrust laws. Section 7 of the Clayton Act is the principal federal statutory provision dealing with mergers and acquisitions and, as explained above, it prohibits transactions that may harm competition in specific markets. Concentration levels are an important part of the analysis, but the ultimate test under Section 7 is whether the acquisition may tend to substantially lessen competition and that is the showing we must be prepared to prove in court, based on the facts in any given case.

I. Vertical Integration

Several commentators express concern about a trend toward vertical integration in agricultural industries, and they ask if the Department gave due consideration to that trend.[24] The Department is aware that some agricultural sectors are experiencing an increase in vertical integration. While a trend toward integration can be anticompetitive in certain circumstances, we did not find that such concerns are presented by the Cargill-Continental transaction.

Vertical integration occurs when several stages of production, processing, distribution, and marketing are brought together in one firm. In broilers, for example, many of the big firms are involved in breeding, hatching, growing, processing, and packaging activities. Vertical integration also appears to be increasing in other agricultural sectors.

In many circumstances, vertical integration is actually procompetitive, allowing firms to reduce their costs. *See* Herbert Hovenkamp, *Federal Antitrust Policy, The Law of Competition and Its Practice,* 332–36 (1994). However, there may be circumstances in which vertical mergers raise antitrust concerns, usually by either increasing barriers to entry, facilitating collusion or circumventing regulation. *Id.* at 346–48.

Since the Cargill-Continental transaction is a horizontal, rather than vertical, acquisition, it does not raise significant vertical issues. The Department did not uncover evidence suggesting that the transaction, as restructured, would have anticompetitive effects at any level in the production chain or result in an increase in vertical integration that would be competitively problematic. In short, the Department was aware of, and did consider, trends toward vertical integration in various agricultural sectors, but concluded that such trends did not provide a basis for seeking broader relief with respect to this transaction.

J. Non-economic Concerns

North Dakota Attorney General Heitkamp urges the Department to go beyond antitrust analysis and give greater consideration to unspecified

[22] Nebraska Attorney General Don Stenberg, AAM Inc., Clean Water Action Alliance, IATP, Kansas Cattlemen's Association, and Minnesota Catholic Conference, Marilyn Borchardt, John W. Helmuth, and Richard and Margene Eiguren.

[23] May Beckrich, Dick Lundebreck, David Olson, and Professor C. Robert Taylor.

[24] South Dakota Attorney General Mark Barnett, AAM Inc., Animal Welfare Institute, Catholic Charities, Clean Water Action Alliance, Jan Lundebrek, David Olson, and Professor C. Robert Taylor.

''non-economic concerns.'' While she does not say so directly, Attorney General Heitkamp may be suggesting that the antitrust laws be used to preserve family farms.

Our prosecution of this matter protects the interests of all farmers, large and small. The proposed Final Judgment is designed to eliminate the risk that Cargill's acquisition of Continental will lessen competition anywhere in the United States. Department staff first identified all markets in which Cargill and Continental are competitors, and then, in every one of these markets, assessed the extent to which the acquisition raises concerns about a loss of competition that would cause competitive problems. Ultimately, we identified nine relevant markets in which farmers were likely to be adversely affected by the creation of monopsony market power that would enable Cargill and other grain companies to depress grain prices. Through divestitures, the proposed Final Judgment resolves those concerns. In addition, the Final Judgment protects against the exercise of market power to manipulate corn and soybean futures prices and limits a non-compete clause that otherwise would have prevented Continental from re-entering the grain distribution business.

As far as our investigation was able to determine, there are no other potential adverse competitive effects likely to arise from the acquisition. The proposed Final Judgment therefore protects sellers of grain throughout the United States from the price depressing effects that otherwise could have been caused by the acquisition. This outcome is beneficial to farmers of every size, including small family farmers.

K. Administrative and Legislative Actions

New Mexico Attorney General Madrid has no opposition to the proposed Final Judgment. Rather, her comment urges the Department to advocate administrative and legislative actions that will invigorate competition in agriculture markets.

The Antitrust Division of the Department of Justice testifies before Congress on antitrust matters and prepares written reports stating the views of the Department on pending or proposed legislation pertaining to antitrust. Division attorneys also participate in administrative proceedings that require consideration of the antitrust laws or competition policies. In these situations, the Division often is the government's principal advocate of competition. Therefore, Attorney General Madrid can be sure that whenever the opportunities present themselves—in legislation, administrative proceedings or elsewhere—the Department will continue to promote competition in agriculture markets.

L. The OCM Comments

OCS's comments indicate that it is dissatisfied with the action taken by the Department of Justice. Apparently, OCM thinks the complaint and proposed Final Judgment are too modest to deal with Cargill's dominance, as perceived by OCM, in numerous agriculture markets throughout the world. OCM's comments thus ''reach beyond the complaint, to evaluate claims that the government did not make and to inquire as to why they were not made.'' *See United States* v. *Microsoft Corp.*, 56 F.3d at 1459. By doing so, OCM invites the court improperly to intrude on the government's prosecutorial role. *See id.*

On the merits, many of OCM's comments in opposition to the Department's analysis are answered by the CIS itself, the rationale of which OCM has not addressed. Rather than repeat the CIS here, we briefly deal with OCM's principal objections with appropriate references to relevant explanations in the CIS or elsewhere in this Response.[25]

1. DOJ Failed To Consider the Wider Concentration in Agricultural Markets Beyond Grain Buying

In addition to its grain trading operations, Cargill has significant presence in beef packing, cattle feedlots, pork packing, broiler and turkey production, animal feed plants, flour and corn milling, soybean crushing, and ethanol production. OCM believes that Cargill transfers resources between these markets according to prevailing economic conditions.[26] In OCM's view, these transfers are bound to increase after the transaction and, in some manner, enhance Cargill's power regardless of its economic performance.

The appropriate question for antitrust purposes, however, is whether, by transferring its own assets across industry lines as it sees fit in response to changing economic conditions, Cargill's ability artificially to depress prices will increase. OCM does not explain how such transfers could actually injure competition, and the Department is not aware of any plausible theories.

2. DOJ Failed To Consider the Continuing Potential for Anticompetitive Behavior in the Post-Merger Market

OCM is concerned that the proposed Final Judgment may not preserve competition in the relevant markets. We address this concern in the CIS at pages 9–17 and in section V(A) of this memorandum.

3. DOJ Failed To Show That the Divested Remnants of Continental Will Be a Competitive Force Absent a Large Network of Elevators That Buy Grain

OCM questions whether the divested grain elevators will be operated by effective competitors if the acquirers do not operate a large-scale network of facilities. This comment also goes to the issue of relief, which we address in section V(A) of this memorandum.

In addition to the points discussed in that section, we note that operators of river elevators and rail terminals who do not have extensive distribution networks in their facilities' draw areas do not have to buy their grain from Cargill or other national grain companies—they can buy from farmers and local or regional operators of country elevators in those markets. Likewise, operators of port elevators who do not have extensive inland distribution networks can buy grain from independent operators of river elevators and grain terminals in their facilities' draw areas. On the basis of these facts and other information that we learned about the acquirers and competitive conditions in the markets where the divested facilities are located, we concluded that all of the acquirers of the divested facilities are likely to be viable and effective competitors as a result of the elevators that they are acquiring.

4. DOJ Failed To Consider the Impact on Potential Entry Into Grain Buying Markets

OCM suggests that Continental should be held together because it is one of the few firms that has the potential to challenge Cargill in markets that Cargill now dominates, citing *United States* v. *Penn-Olin Chemical Co.,* 378 U.S. 158 (1964), for that proposition. The teachings of *Penn-Olin* do not apply to the facts in this case.

In *Penn-Olin*, the Supreme Court considered the legality of a joint venture between two chemical companies to build a sodium chlorate plant. Although the joint venture would have added a

[25] In a separate filing, Nebraska Attorney General Don Stenburg shares OCM's concerns as they are set out in points 4, 5, 6, 8, and 9 of this section.

[26] OCM refers to these transfers of resources between markets as ''cross-subsidization,'' and claims that they make diversified firms ''even more capable of * * * anti-competitive behavior.'' OCM at 2–3.

sodium chlorate producer to the market, the Court remanded the case with instructions that the district court consider ''the reasonable probability that either one of the corporations would have entered the market by building a plant, while the other would have remained a significant potential competitor.'' *Id.* at 175–76. The Court's rationale was that ''[t]he existence of an aggressive, well equipped, and well financed corporation engaged in the same or related lines of commerce waiting anxiously to enter an oligopolistic market would be a substantial incentive to competition which cannot be underestimated.'' *Id.* at 174.

Penn Olin thus concerns the protection of the present competitive force of a likely potential entrant—a firm perceived as a likely entrant by those in the market. That is not our concern in this case because Continental is presently in the market. We are concerned with the protection of *actual competition* in grain markets throughout the United States. As explained at pages 9–17 of the CIS and in section V(A) of this memorandum, the proposed Final Judgment fully addresses this concern by divesting Continental's assets to new, independent competitors in the markets, who can ensure that farmers receive a competitive price for their grain after the transaction.

5. DOJ Failed To Consider the Nature of Grain Selling Markets

It is true, as OCM suggests, that a lessening of competition in world grain markets could have an adverse effect on competition within the United States. Therefore, contrary to OCM's assertion, we did assess Cargill's acquisition of Continental in the light of market conditions throughout the world.

Our investigation revealed that numerous firms sell to buyers in foreign countries—including big international grain traders (such as Cargill, Bunge, ADM, Peavey, and Louis Dreyfus), smaller regional grain traders, and domestic producers in most foreign countries. These numbers suggest that overseas markets will remain unconcentrated, even after Cargill acquires Continental. Acquisitions in unconcentrated markets rarely have adverse competitive effects, and OCM provides no evidence to the contrary.[27]

6. DOJ Failed To Consider the Economic Disorganization of Farmers Which Can Be Exploited by Powerful Buyers

Many thousands of farmers produce corn, wheat, and soybeans in the United States. As grain leaves their farms, however, the number of firms that buy grain from the farmers becomes much smaller. OCM says this disparity ''creates a rationale for scrutinizing the power of buyers relative to sellers.'' We agree with OCM on this point; its assertion that we ignored buyer power in our analysis is simply incorrect.

If there is one theme that unifies our analysis, it is that Cargill's acquisition of Continental should not be permitted to create or enhance market power or to facilitate its exercise. CIS at 4–9; *see also* section IV(B) of this memorandum. Market power in this case means the ability of Cargill, as a buyer, to depress the price it pays for grain. *See* section IV(B)(4) of this memorandum. During the course of our investigation, we located every grain market in the United States in which it appeared likely that Cargill could depress prices as a result of the acquisition—and we obtained appropriate relief to address that concern. See *id.* at section V(A).[28]

In short, the Department has not ignored the ''power of buyers'' that concerns OCM. Rather, we now recommend entry of the proposed Final Judgment, which will ensure that this transaction does not give Cargill the opportunity to exercise monopsony power over farmers anywhere in the United States.

7. DOJ Failed To Consider Informational Disparities in Agricultural Markets

OCM does not explain how Cargill's acquisition of Continental will exacerbate informational disparities that may exist in agriculture markets. To the extent that Cargill or other grain merchants have the benefit of information that may be in some sense superior, there is no evidence that such information will improve after the transaction so as to lessen competition. Assuming information disparities could be the predicate for a Section 7 violation, they are not exacerbated by the transaction.

8. DOJ Failed To Explain the Benefits of the Merger

OCM's argument that we should explain the efficiencies in order to justify our ''approval of the merger,'' OCM comment at 8, suggests that it misunderstands the role of the Department of Justice in reviewing mergers subject to the antitrust laws. The Department does not approve mergers. Rather, the Department reviews the particular facts and circumstances of each proposed merger in order to determine whether the merger is likely to substantially lessen competition. If the Department determines that a proposed merger is likely to lessen competition in violation of the antitrust laws, we seek an injunction from the court to prohibit the transaction.

As the Complaint and CIS make clear, the Department challenged this merger in its original form as being in violation of Section 7 of the Clayton Act. The Department did not rely upon any asserted ''efficiencies'' as a defense to allow Cargill to acquire Continental facilities in any relevant market in which we concluded that the transaction would otherwise tend substantially to lessen competition. The Department agreed to settle only after Cargill and Continental agreed to be bound by the terms of the proposed Final Judgment, which has the effect of substantially altering the terms of the merger to ensure that the transaction will not give grain companies market power to depress grain prices in any relevant market in the United States.

9. DOJ Failed To Consider a Range of Statutes That Congress Intended Courts To Consider When Making Decisions About Agriculture Markets

OCM refers at some length to the Packers and Stockyards Act, the Capper-Volstead Act, and the Agricultural Fair Practices Act. OCM then concludes that ''mergers or other activities that enhance the power of buyers'' require careful review under the antitrust laws, especially when farmers are involved. *See* OCM comment at 12. The United States carefully investigates *all* mergers that may create substantial competitive harm affecting any group, including farmers. As the CIS and this Response make clear, the Department's concern for Cargill's power as a buyer of grain from farmers has been central to our analysis, prosecution, and proposed remedy in this case.

10. DOJ Failed To Consider That the Consent Decree Risks Leaving Farmers Without an Effective Outlet for Legal Redress

OCM believes that the court of Appeals for the District of Columbia Circuit has ''severely restricted'' the ability of the district court to determine whether the proposed Final Judgment is in the public interest as required by the

[27] As noted in section IV(B)(4) of this Response, our investigation did indicate competitive problems at U.S. export facilities because Cargill and Continental were two of a relatively small number of grain buyers in the relevant port ranges, not because Cargill and Continental were two of a relatively small number of grain sellers in any overseas market.

[28] As noted in section V(B) of this Response, no commentator suggested that we failed to require divestitures in any specific local or regional market in which Cargill and Continental are two of a relatively small number of grain buyers.

APPA. *See* OCM comment at 13. For that reason, OCM is concerned that the interests of midwestern farmers may not be fully considered in this federal circuit.

There is no reason to believe that the District Court for the District of Columbia cannot make the public interest determination that is required by law in this case.

M. A Hearing Is Unnecessary in This Case

Nebraska Attorney General Stenberg urges the Court to appoint a special master ''to hear evidence and to make a recommendation to the court as to the efficacy'' of the proposed Final Judgment prior to its entry. *See* Brief of the Attorney General of Nebraska as Amicus Curiae at 13–14. The APPA provides that the Court must make a determination that entry of the proposed consent judgment is in the public interest before entering that judgment. The statute provides that in making such a public interest determination, the Court ''may'', *inter alia,* appoint a special master, conduct proceedings involving the taking of testimony and documentary evidence, and ''take such other action in the public interest as the court may deem appropriate.'' 15 U.S.C. 16(f)(5). The statute does not require the Court to hold hearings, but directs the court to take such action as it deems appropriate.

As noted in section II of this memorandum, Congress, in passing the APPA, intended that consent decrees remain a viable antitrust enforcement option. They could not remain viable if it were necessary for a reviewing court to conduct a trial for a *de novo* determination of factual issues relevant to the adequacy of a proposed decree. The legislative history is clear that the court need not conduct the equivalent of a trial on the merits, or even conduct a hearing or take evidence, S.Rep. No. 298–93 at 6 (1973):

> The Committee recognizes that the court must have broad discretion to accommodate a balancing of interests. On the one hand, the court must obtain the necessary information to make its determination that the proposed consent decree is in the public interest. On the other hand, it must preserve the consent decree as a viable settlement option. It is not the intent of the Committee to compel a hearing or trial on the public interest issue. It is anticipated that the trial judge will adduce the necessary information through the least complicated and least time-consuming means possible. Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, this is the approach that should be utilized. Only where it is imperative that the court should resort to calling witnesses for the purpose of eliciting additional facts should it do so.[29]

The expeditious procedures to determine the public interest that Congress envisioned are not possible without reliance upon the Department's good faith execution of its prosecutorial discretion. Evidentiary hearings, therefore, should be used only in extreme cases. *See United States* v *G. Heileman Brewing Co.,* 563 F. Supp. 642, 652 (D. Del. 1983) (''This preference for the comment procedure over more burdensome forms of third-party participation * * * is clearly shown by the legislative history of the APPA.'').

In the instant case, an evidentiary hearing would be inordinately time consuming and would not in any way further the Court's understanding of facts relevant to the determination it must make. There has been no claim of bad faith or malfeasance on the part of the United States in settling this case. *See AMPI,* 394 F. Supp. at 41, and cases cited. Nor has Attorney General Stenberg explained why he has not been able to fully apprise the Court of his concerns in the comments he has already filed with respect to the proposed Final Judgment. *See Heileman Brewing Co.,* 563 F. Supp. at 653.

The Court need only consider the proposed Final Judgment as explained by the CIS, the comments thereon, and this Response thereto. Such consideration will amply demonstrate that the proposed Final Judgment satisfies the public interest standard of the APPA as interpreted by the courts.

N. The 60-Day Comment Period Should Not Be Extended

Several commentators request that the time period for filing public comments be extended.[30] There is no need for such extension.

The 60-day public comment period specified in 15 U.S.C. 16(b) commenced on August 12, 1999 and terminated on October 12, 1999; but we have considered and responded to every comment that we received before or after the deadline. Those who request more time for the filing of comments do not suggest the existence of relevant facts that the Department has failed to consider in negotiating and consenting to the proposed Final Judgment. Nor do they explain why more time would be desirable to assist the Court in making the public interest determination that is required by the APPA. Under the circumstances, an extension of the 60-day public comment period is unnecessary and inappropriate in this action.

Conclusion

The Competitive Impact Statement and this Response to comments demonstrate that the proposed Final Judgment serves the public interest. Accordingly, after publication of this Response in the **Federal Register** pursuant to 15 U.S.C. 16(b), the United States will move this Court to enter the Final Judgment.

Dated this 11th day February, 2000.
Respectfully submitted,

Robert L. McGeorge,
D.C. Bar No. 91900.

Michael P. Harmonis,
U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Suite 500, Washington, D.C. 20530, (202) 307–6361.

Certificate of Service

I hereby certify that I am an attorney for the United States in this action, and have caused true and correct copies of the foregoing UNITED STATES RESPONSE TO PUBLIC COMMENTS to be served by first-class mail or by more expeditious means on counsel for the defendants, Marc G. Schildkraut, Esq., Howrey & Simon, 1299 Pennsylvania Ave., NW, Washington DC, Paul T. Dennis, Esq., Swidler Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300 Washington, DC and Jack Quinn, Esq., Arnold & Porter, 555 12th Street, NW, Washington, DC, on this 11th day of February, 2000.

Michael P. Harmonis.

United States Response to Public Comments—Appendix

Communications with respect to this document should be addressed to:

Roger W. Fones, Chief, Donna N. Kooperstein, Assistant Chief; Robert L. McGeorge, Michael P. Harmonis, Attorneys; Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, NW, Washington, DC 20530, (202) 307–6361.

Public Comments

The comments from members of the public that follow in this Appendix were filed during the sixty-day period specified in 15 U.S.C. 16(b),

[29] This passage is quoted in *United States v. Associated Milk Producers, Inc.*, 394 F. Supp. 29, 45 (W.D. Mo. 1975), *aff'd,* 534 F.2d 113 (8th Cir. 1976), *cert. denied sub non. National Farmers Org., Inc. v. United States,* 429 U.S. 940 (1976) (hereafter ''AMPI'').

[30] Animal Welfare Institute, NFO Kansas, OCM, Insabelle Barth, Mary Casserand, Steve Dewell, Grant and Mabel Dobbs, Barbara Hook, Jay Godley, Todd Lewis, Glenn Oshiro, N. Ramsey, Ellen Stebbins, Giles Stockton, Dr. Frankie M. Summers, Dennis and Janice Urie.

commencing on August 12, 1999 and terminating on October 12, 1999.

Congresswoman Jo Ann Emerson—Tab 1
State Attorneys General (alphabetical by State)—Tab 2
Organizations (in alphabetical order)—Tab 3
Individuals (in alphabetical order)—Tab 4

Tab 1

Congress of the United States,
House of Representatives,
Washington, DC 20515–2508, August 11, 1999.

Mr. Roger Fones,
Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, U.S. Department Of Justice, 325 7th Street, NW, Suite 500, Washington, DC 20530.

Dear Mr. Fones: Thank you for the attention of your Department to the plans by Cargill, Inc. to acquire the grain handling interests of Continental Grain. In all of agriculture, from transportation to processing, to inputs, there is a troubling trend toward larger and fewer companies. It is vitally important that your office work to prevent the kind of consolidation in agriculture markets that hurts producers. In the case of Cargill, I believe that your investigation and the ensuing stipulations were well warranted. However, I hope that you will consider an issue that has been raised by producers in my District regarding the consent agreement that the DOJ has entered into with Cargill (civil action number 991875).

Specifically, I have been contacted by producers in Southeast Missouri concerned that Continental's Cottonwood Point facility may be sold to an entity already possessing a significant share of the local grain market. As you know, the consent agreement requires Cargill to divest itself of the Cottonwood Point facility in order to satisfy competitive concerns. Local producers fear that Bunge would gain a near monopoly share of the local market if it were allowed to purchase the facility. I urge you to exercise strict oversight authority over the divestiture of the Cottonwood Point facility in order to prevent an unintended, anticompetitive situation.

Thank you for your attention to this matter and I look forward to hearing from you.

Sincerely,

Jo Ann Emerson, Member of Congress.

Tab 2

Richard Blumenthal, Attorney General,
State of Connecticut
Hartford June 23, 1999.

The Honorable Joel I. Klein,
Assistant Attorney General, Antitrust Division, Department of Justice, 950 Pennsylvania Avenue, N.W., Room 3109, Washington, D.C. 20530.

Re: Mergers in the Agricultural Industry.

Dear Joel: I am sure you are aware of Minnesota Attorney General Mike Hatch's recent letter to you—which he has suggested I support in my capacity as Chair of the Antitrust Committee of the National Association of Attorneys General—expressing his concern about the proposed merger of the grain operations of Cargill, Inc. and Continental Grain Company. In addition, I understand that North Dakota Attorney General Heidi Heitkamp, Missouri Attorney General Jay Nixon, and South Dakota Attorney General Mark Barnett have each written to express their similar concerns about this proposed merger.

As the Chair of the Antitrust Committee, I join in asking you to consider carefully the possible damage to our nation's agricultural industry caused by undue concentration in numerous grain markets.

In exercising our *parens patriae* authority, Attorneys General are often called upon to evaluate and gauge the competitive harm that may result in their own states from a proposed merger. Moreover, we are all well informed of the benefits of competitive markets in lower prices and better quality for consumers. Given the importance of the food supply to our national, as well as local, interests, and the needs of consumers and farmers for fair pricing, it is crucial that we not allow monopolies or oligopolies to form—or if already formed, from abusing their market power—at any level of the agricultural industry. I urge you to be wary of and oppose any merger that may tend to lessen competition in this all-important industry in the interests of farmers and consumers alike.

Very truly yours.

Richard Blumenthal.

Mike Hatch, Attorney General
State of Minnesota
Office of the Attorney General,
St. Paul, MN, October 12, 1999.
Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Re: Comment—Proposed Consent Decree Approving the Proposed Merger of Cargill, Inc. and Continental Grain Co.

Dear Mr. Fones: I submit these comments about the proposed Cargill-Continental merger pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (1998). Our concerns were explained in detail in a letter submitted to the Department of Justice in May, attached for your information as Exhibit 1. While we appreciate the Department of Justice's (DOJ) efforts in its lengthy investigation of the proposed merger and while the proposed consent decree strives to alleviate many concerns that have been raised regarding this merger, we remain concerned about the impact of this merger upon farmers and rural communities in Minnesota. This merger is taking place in the context of a nationwide, even a global trend toward consolidation of agricultural industries which, we fear, will only harm the interests of farmers, consumers, and local communities.

As noted in our earlier letter, the grain industries, particularly grain exports, are already highly concentrated, increasing the likelihood that further concentration will lead to oligopsony and even monopsony markets for grain farmers and other sellers of grain. Further, agricultural industries are experiencing a high rate of vertical consolidation as well, with Cargill being one of the key players in this vertical consolidation given its ties to agricultural biotechnology, grain production, animal feed, meat packing, food processing, *etc.* Particularly disturbing are recent comments of the chairman of Cargill who has publicly proclaimed the company's intention to continue to expand its market reach throughout agricultural industries, both on a horizontal and vertical level. ''Cargill Chairman Micek Says Acquisitions Could Fuel Growth,'' Star Tribune, September 11, 1999 (Exhibit 2). These comments illustrate Cargill's intention to further reduce competition in agricultural markets a time when its most recent and controversial acquisition has not even been finalized.Thus, we believe it would be prudent for the consent decree to prohibit Cargill from acquiring any other direct competitors in grain export, transport, and storage markets.

Also, it should be noted that Cargill continues to come under scrutiny for its business conduct. In the most recent example, a little over one month ago, the Commodities Futures Trading Commission charged Cargill with improper selling of a commodity option for future delivery of grain, because of its use of certain contracts. Barshay, Jill, ''Cargill Charged With Illegally Selling Option Contracts,'' Star Tribune, August 27, 1999 (Exhibit 3). This type of alleged conduct is directly relevant to the proposed merger, and should be considered by the Court in its evaluation of the proposed merger and consent decree.

Finally, should the Court approve the proposed consent decree and allow the merger to take place, we urge the Department of Justice to strictly scrutinize Cargill's and Continental's compliance with the proposed final order, and to exercise its discretion in approving acquirers of the proposed divestitures in a careful and exacting way. As the Department of Justice will have sole discretion to approve or disapprove any proposed acquirers, we ask that it exercise this discretion vigilantly to minimize to the greatest degree possible any potential harm to competition and public welfare that may result from this merger.

Very truly yours,

Mike Hatch,
Attorney General, State of Minnesota.

Exhibit 1 to the comment filed by Minnesota Attorney General Mike Hatch is available for inspection in room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW, Washington, DC 20530 (telephone: 202–514–2481) and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001. Copies of these materials may be obtained upon request and payment of a copying fee.

Jeremiah W. (Jay) Nixon, Attorney General,
Attorney General of Missouri,

Jefferson City, MO, September 16, 1999.

Mr. Roger W. Fones, Esq.,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Re: Comments on Proposed Consent Decree and Divestiture Settlement, Cargill, Inc.'s Acquisition of Continental Grain Company.

Dear Mr. Fones: As Missouri Attorney General, I wrote directly to Joel Klein, Assistant Attorney General in charge of the Antitrust Division, in mid-May, 1999, regarding the above-referenced acquisition. I had also instructed my assistant, Trey Hanna, to assist your office in assessing the anticompetitive impact this merger would have on grain farmers in southeast Missouri. As expressed on earlier occasions, I am concerned about this acquisition.

I was quite glad to see that the Department of Justice secured (1) Cargill's agreement that it would not seek to acquire any ownership interest in the river elevator at Birds' Point, Missouri, which Continental had previously held, and (2) Continental's agreement to first divest its river terminal at Cottonwood Point, Missouri, (near Caruthersville) before conveying most of its other grain assets to Cargill. Allow me to again express our thanks.

But we are still concerned; it remains to be seen whether the new owner of that Cottonwood Point facility will be acceptable.

We have analyzed competitive conditions in southeast Missouri's grain business and farmers' ability to secure a fair price for their product. We have analyzed the ''Competitive Impact Statement'' (C.I.S.) filed by the Department of Justice on July 23, 1999 and subsequently published in the **Federal Register**. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)–(h), I now wish to formally comment on the proposed consent decree which, if approved by the court, will become a final judgment and will set competitive conditions in southeast Missouri for many years to come.

As the Department of Justice explained in that C.I.S., the core purpose of requiring Continental to first divest the Cottonwood Point facility is to ''preserve existing competition'' and ''maintain the level of competition [in southeast Missouri] that existed pre-acquisition.'' (C.I.S., at p. 9). As also recited therein, the Department of Justice has the sole discretion to approve or disapprove the manner in which the defendants propose to implement the divestiture of this facility (C.I.S., at p. 12), and whom they propose to divest it to (C.I.S., at p. 11).

Farmers in southeast Missouri hear rumors that Continental may propose to divest the Cottonwood Point facility to Bunge, the second largest competing purchaser of grain in the area (after Cargill). That would reduce the number of competing buyers of grain from four to three, being nearly as bad for competition in southeast Missouri as a sale to Cargill, which you sued to prevent. Likewise, a divestiture to Consolidated Grain and Barge (C.G.B.), another competitor in the market, would also be far from optimal.

Before Cargill and Continental announced this global transaction, farmers in southeast Missouri had four competing buyers to sell their product to. We urge the Department of Justice to exercise its discretion, when approving proffered buyers, to make sure they have four separate and distinct buyers after this divestiture, as well.

While my analysis has focused exclusively on the Missouri facilities, I also have concerns about the impact of this merger on the market generally. I share the concern of many Missouri farmers that the current anti-trust laws and resources may not adequately protect them from attempts to manipulate the market place. I urge the Justice Department to scrutinize this acquisition closely in light of the growing consolidation in agriculture.

Thank you for giving these comments due consideration. If we can answer any questions or provide other assistance, don't hesitate to contact us through my assistant, Trey Hanna, at (816) 889–5000.

Sincerely,

Jeremiah W. (Jay) Nixon.

Don Stenberg, Attorney General,
State of Nebraska,
Office of the Attorney General,
Lincoln, Nebraska 68509–8920, September 7, 1999.

Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Re: United States of America v. Cargill, Inc and Continental Grain Company.

Dear Mr. Fones: Pursuant to the Antitrust Procedures and Penalties Act, I am writing in my official position as the Attorney General of the State of Nebraska to object to the proposed final judgment in this case. In my opinion, the approval of the consent decree is not in the public interest and is not consistent with the public policy underlying federal antitrust statutes.

The proposed consent decree requires the divestiture of certain grain elevators in specified locations, but otherwise approves the merger of two of our nation's largest grain trading companies.

The increasing concentration in agricultural marketing and processing will mean lower prices for farmers and higher prices for consumers. Indeed, it was farmers' protests against the formation of large agricultural marketing and processing trusts in the late 1800's that led to the creation of our antitrust laws.

We are now seeing the same types of concentrations of economic power in the agricultural processing and marketing industries that existed over 100 years ago until they were broken up by the passage and enforcement of federal antitrust laws. At a minimum, a line must now be drawn to prevent further anti-competitive economic concentration in agriculture.

The fundamental flaw in the U.S. Justice Department's analysis that it fails to recognize that grain handling and grain merchandising is a nationwide and worldwide business. The proposed merger needs to be viewed not simply on a region by region basis, but upon overall national grain marketing implications.

The fundamental evils of excessive economic concentration are well known and have been well known for more than 100 years. In a highly concentrated industry, it is easy to keep track of the prices a handful of competitors are paying to acquire grain and to sell it. It is in the interest of the handful of competitors to uniformly offer low prices to buy and high prices to sell to consumers. This is true whether or not there is an explicit contract or conspiracy in restraint of trade. Moreover, it is easier and more tempting to form contracts or conspiracies to restraint of trade in a highly concentrated industry.

In a May 7, 1999 letter concerning the Cargill/Continental merger to the U.S. Department of Justice, Minnesota Attorney General Mike Hatch noted some basic market share information that is of great importance. He pointed out that Cargill and Continental are the two largest grain exporters in the United States. Cargill is the nation's largest grain exporter and Continental is the second largest. General Hatch goes on the explain that in fiscal year 1998, the market shares for the four largest national grain exporters (including Cargill and Continental) range from 46.6% for wheat to 64.9% for soybeans and 80.9% for corn. Cargill itself estimates that it and Continental together control about 35% of the U.S. grain exports.

Continental and Cargill are both already such large enterprises that it is very doubtful that this merger will produce any economies of scale that would increase profits. Rather, increased profits will come from the increased market power to pay producers less and charge consumers more by virtue of vastly increased economic power.

The purpose of the anti-trust statutes is to preserve the free markets so that our free enterprise system can produce the fairest prices for both producers and consumers. The anti-trust statutes should be brought to bear in this case for that very reason.

As General Hatch correctly noted in his May 7 letter, these issues are national in scope and adequate resolution cannot come from the state or local level. If the U.S. Department of Justice cannot be persuaded to vigorously oppose a merger of this magnitude, it is difficult to imagine any merger in the area of agri-business which would be opposed by the Department.

Those of us from agricultural states understand the negative impact of excessive economic concentrations in agriculture on our farmers and ranchers. Persons from non-agricultural states should carefully consider the substantial increases in consumer food prices that loom on the horizon if further economic concentration occurs in our agricultural sector.

Yours truly,

Don Stenber.

In the matter of The United States District Court for the District of Columbia; United States of America, Plaintiff, vs. Cargill, Incorporated, and Continental Grain Company, Defendants; Case No. 1:99CV01875 (GK) Judge; Gladys Kessler.

Filed October 22, 1999.

Motion by the Attorney General of Nebraska To File Brief as Amicus Curiae

Comes Now Don Stenberg, the Attorney General of the State of Nebraska, and moves this Court for leave to file the brief attached hereto as Exhibit A as amicus curiae in the above-referenced action. The Attorney General of Nebraska has a special interest in the subject matter of this lawsuit because of his duties and responsibilities to enforce the antitrust laws, and because the merger proposed herein will have a significant impact upon the State of Nebraska.

Don Stenberg, #14023,

Attorney General of Nebraska.

Dale A. Comer, #15365,

Assistant Attorney General, 2115 State Capitol, Lincoln, NE 68509–8920, Tel: (402) 471–2682.

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Motion By The Attorney General Of Nebraska To File Brief As Amicus Curiae with attachments has been served upon the parties herein by mailing each of those parties a true and correct copy of the same, via first-class United States Mail, postage prepaid, addressed to the parties' counsel of record as follows:

Robert L. McGeorge, Esq.

Attorney, U.S. Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Marc G. Schildkraut, Esq.,

Howrey & Simon, 1299 Pennsylvania Avenue, NW, Washington, DC 20004.

Paul T. Denis, Esq.,

Swidler, Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300, Washington, DC 20007–5116.

Jack Quinn, Esq.,

Arnold & Porter, 555 Twelfth Street, NW, Washington, DC 20004.

On this 21st day of October, 1999.

Dale A. Comer,

Assistant Attorney General.

Memorandum of Points and Authorities in Support of Motion by the Attorney General of Nebraska To File Brief as Amicus Curiae

Don Stenberg, #14023,

Attorney General of Nebraska.

Dale A. Comer, #15365,

Assistant Attorney General, 2115 State Capitol, Lincoln, NE 68509–8920, Tel: (402) 471–2682.

Introduction

This case involves an action under the Tunney Act, and in particular 15 U.S.C. 16(e), in which the parties seek this court's approval of a proposed final consent judgment involving a corporate merger between Cargill, Inc. and Continental Grain Company. The Attorney General of the State of Nebraska has now filed a Motion For Leave To File A Brief As Amicus Curiae in this proceeding. This Memorandum of Points and Authorities is submitted to the court in support of that Motion.

Argument

I

The decision as to whether to allow participation by amicus curiae in this case is left to the discretion of this court.

In general, the decision as to whether to allow a non-party to participate in a case as *amicus curiae* is solely within the broad discretion of the court. *Ellsworth Associates, Inc.* v. *United States,* 917 F.Supp. 841 (D.D.C. 1996). Such discretion also applies within the specific context of the Tunney Act. *United States* v. *Associated Milk Producers,* 394 F.Supp. 29 (W.D.Mo. 1975). The aid of amicus curiae is appropriate at the trial level where they can provide helpful analysis of the law. *Waste Management of Pennsylvania* v. *City of York,* 162 F.R.D. 34 (M.D.Pa. 1995). *Amicus curiae* are also appropriate when they have a special interest in the subject matter of the suit. *Strasser* v. *Doorley,* 432 F.2d 567 (1st Cir. 1970). As a result, the decision as to whether to allow participation by amicus curiae in this case is left to the discretion of this court, and such participation is warranted if the amicus participants can provide a helpful analysis of the law or if they have a special interest in the subject matter of this suit.

II

The court should exercise its discretion so as to allow the Attorney General of Nebraska to file a brief in this case as amicus curiae.

The *amicus curiae* brief which the Attorney General of Nebraska proposes to submit to this court contains a detailed discussion and analysis of the proposed Final Judgment in this case under the applicable antitrust laws, and therefore, will hopefully provide this court with a helpful analysis of the law. More importantly, the Attorney General of Nebraska has a special interest in the subject matter of this lawsuit, in two respects.

First, the Attorney General of Nebraska is the primary state official in Nebraska charged with the duty of enforcing the state's antitrust laws. See, *e.g.,* Neb. Rev. Stat. §§ 59–1601 through 59–1623 (1998) (the Nebraska Consumer Protection Act which, among other things, authorizes the Attorney General to bring an action seeking to enjoin a corporate acquisition which would ''substantially lessen competition or tend to create a monopoly in any line of commerce); Neb. Rev. Stat. §§ 59–801 through 59–831) (1998) (authorizing criminal sanctions for antitrust violations in Nebraska); and Neb. Rev. Stat. §§ 84–212 (1994) (authorizing the Attorney General to sue a *parens patriae* on behalf of citizens of the state to recover damages sustained by those citizens as a result of violations of the state or federal antitrust laws). The Nebraska Attorney General also has specific enforcement authority under the federal antitrust laws. See, *e.g.,* Section 4 of the Clayton Act, 15 U.S.C. 15 (1998) (authorizing states to sue for proprietary damages inflicted upon them); Title III of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 15c (1998) (authorizing state attorneys general to sue for damages as *parens patriae* on behalf of natural persons); Section 16 of the Clayton Act, 15 U.S.C. § 26 (1998); *California* v. *American Stores Co.,* 495 U.S. 271 (1990) (upholding state's right pursuant

to Section 16 of the Clayton Act to obtain injunctive relief, including divestiture, against illegal mergers); *Hawaii* v. *Standard Oil,* 405 U.S. 251, 257–60 (1972) (acknowledging state's authority to seek injunctive relief on behalf of general economy of the state). As a result, the Attorney General of Nebraska has a strong interest in antitrust enforcement and in promoting free and fair competition. The Attorney General of Nebraska also has a strong interest in protecting the citizens of Nebraska from unreasonable restraints of trade, both in their capacities as consumers and their capacities as competitors.

Second, agriculture is an important and major industry in the State of Nebraska. In 1997, more than 96 percent of the state's land, involving 47 million acres, was farm and ranchland. Clerk of the Nebraska Legislature, Nebraska Blue Book 1998–99 (Michael R. Lewis ed., 1998) p. 40. In that same year, gross cash receipts from farm marketing in Nebraska totaled $10.1 billion, and Nebraska had 55,000 farms that produced food for consumers in the United States and abroad. *Id.* Consequently, any anticompetitive activities which affect agricultural markets and farmers in the State of Nebraska in general are of concern to the Attorney General of Nebraska.

It is also clear that agricultural interests and farmers in Nebraska are affected specifically by the details of the proposed final consent judgment in this case. As noted in the government's Competitive Impact Statement herein, the overlapping draw area for the Pacific Northwest includes portions of Nebraska. Competitive Impact Statement at 4. In addition, the overlapping draw area for the Texas Gulf also includes portions of Nebraska. Competitive Impact Statement at 4. Therefore, the final consent judgment proposed in this case affects the agricultural industry in Nebraska, and the Attorney General of Nebraska has a direct responsibility to deal with anticompetitive practices affecting those markets. On that basis, the Attorney General also has a special interest in the subject matter of this lawsuit.

Conclusion

An amicus brief by the Attorney General of Nebraska in this case would provide this court with a helpful analysis of the law. Moreover, for the reasons stated above, the Attorney General of Nebraska has a special interest in the subject matter of this lawsuit. As a result, the Attorney General of Nebraska respectfully requests that this court exercise its discretion and grant him leave to participate in this action by filing a brief as *amicus curiae.*

Dated this 21st day of October, 1999.

(By: Don Stenberg, #14023, Attorney General)

Don Stenberg,

Attorney General of Nebraska.

Dale A. Comer, #15365,

Assistant Attorney General, 2115 State Capitol, Lincoln, NE 68509–8920, Tel: (402) 471–2682.

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Memorandum Of Points And Authorities in Support Of Motion By The Attorney General Of Nebraska To File Brief As *Amicus Curiae* has been served upon the parties herein by mailing each of those parties a true and correct copy of the same, via first-class United States Mail, postage prepaid, addressed to the parties' counsel of record as follows:

Robert L. McGeorge, Esq.,

Attorney, U.S. Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Marc G. Schildkraut, Esq.,

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Paul T. Denis, Esq.,

Swidler, Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300, Washington, DC 20007–5116.

Jack Quinn, Esq.,

Arnold & Porter, 555 Twelfth Street, NW, Washington, DC 20004.

On this 21st day of October, 1999.

Dale A. Comer,

Assistant Attorney General.

Brief of the Attorney General of Nebraska as Amicus Curiae

Don Stenberg, #14023,

Attorney General of Nebraska.

Dale A. Comer, #15365,

Assistant Attorney General, 2115 State Capitol, Lincoln, NE 68509–8920, Tel: (402) 471–2682.

Exhibit A

Interest of Amicus Curiae

The Attorney General of Nebraska is the primary state official in Nebraska charged with the duty of enforcing the state's antitrust laws. See, *e.g.,* Neb. Rev. Stat. §§ 59–1601 through 59–1623 (1998) (the Nebraska Consumer Protection Act which, among other things, authorizes the Attorney General to being an action seeking to enjoin a corporate acquisition which would ''substantially lessen competition or tend to create a monopoly in any line of commerce); Neb. Rev. Stat. §§ 59–801 through 59–831 (1998) (authorizing criminal sanctions for antitrust violations in Nebraska); and Neb. Rev. Stat. § 84–212 (1994) (authorizing the Attorney General to sue as *parens patriae* on behalf of citizens of the state to recover damages sustained by those citizens as a result of violations of the state or federal antitrust laws). The Nebraska Attorney General also has specific enforcement authority under the federal antitrust laws. See, *e.g.,* Section 4 of the Clayton Act, 15 U.S.C. 15 (1998) (authorizing states to sue for proprietary damages inflicted upon them); Title III of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 15c (1998) (authorizing state attorneys general to sue for damages as *parens patriae* on behalf of natural persons); section 16 of the Clayton Act, 15 U.S.C. 26 (1998); *California* v. *American Stores Co.,* 495 U.S. 271 (1990) (upholding state's right pursuant to Section 16 of the Clayton Act to obtain injunctive relief, including divestiture, against illegal mergers); *Hawaii* v. *Standard Oil,* 405 U.S. 251, 257–60 (1972) (acknowledging state's authority to seek injunctive relief on behalf of general economy of the state). As a result, the Attorney General of Nebraska has a strong interest in antitrust enforcement and in promoting free and fair competition. The Attorney General of Nebraska also has a strong interest in protecting the citizens of Nebraska from unreasonable restraints of trade, both in their capacities as consumers and in their capacities as competitors.

Agriculture is an important and major industry in the State of Nebraska. In 1997, more than 96 per cent of the state's land, involving 47 million acres, was farm and ranch land. Clerk of the Nebraska Legislature, Nebraska Blue Book 1998–99 (Michael R. Lewis ed., 1998) p. 40. In that same year, gross cash receipts from farm marketing in Nebraska totaled $10.1 billion, and Nebraska had 55,000 farms that produced food for consumers in the United States and abroad. *Id.* As a result, any anticompetitive activities which affect agricultural markets and farmers in the State of Nebraska in general are of concern to the Attorney General of Nebraska.

It is also clear that agricultural interests and farmers in Nebraska are affected specifically by the details of the proposed final consent judgment in this case. As noted in the government's Competitive Impact Statement herein, the overlapping draw area for the Pacific Northwest includes portions of Nebraska. Competitive Impact Statement at 4. In addition, the

overlapping draw area for the Texas Gulf also includes portions of Nebraska. Competitive Impact Statement at 4. As a result, the final consent judgment proposed in this case will affect the agricultural industry in Nebraska, and the Attorney General of Nebraska has a direct responsibility to deal with anticompetitive practices in those markets.

Argument

The Final Consent Judgment Proposed by the Parties in This Proceeding is Not in the Public Interest, and Should Not be Approved by This Court

Under the Tunney Act, and in particular 15 U.S.C. 16(e), this court may approve the final consent judgment proposed by the parties in this case only if the court determines that the entry of such judgment is ''in the public interest.'' For the reasons discussed at length below, the Attorney General of Nebraska contends that the consent judgment with Cargill and Continental Grain Company (hereafter ''Continental'') proposed by the United States is deficient and not in the public interest. Consequently, this court should refuse to approve that final consent judgment.

I

In a proceeding under the Tunney Act, this court is not a ''rubber stamp'' for the Department of Justice, but acts as an independent check on the terms of the proposed final consent judgment.

A number of federal cases have set out the applicable standards with respect to a review of a proposed final consent judgment proposed by the government under the Tunney Act. First of all, it is clear that the court is not to act simply as a ''rubber stamp'' for the proposal submitted by the Department of Justice. *United States* v. *BNS Inc.,* 858 F.2d 456 (9th Cir. 1988); *United States* v. *Western Electric Company,* 767 F.Supp. 308 (D.D.C. 1991). Instead, the court ''is required to act as an independent check on the terms of such decrees.'' *United States* v. *Western Electric Company,* 767 F.Supp. 308, 328 (D.D.C. 1991). In addition, Congress did not intend the court's review of a proposed final consent judgment under the Tunney Act to be merely pro forma or limited to what appears on the surface. *United States* v. *Gillette Company,* 406 F.Supp. 713 (D. Mass. 1975). The court must make an independent determination as to whether or not entry of a proposed consent decree is in the public interest. *United States* v. *Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995).

What constitutes the ''public interest'' in the context of this type of proceeding was discussed at length in *United States* v. *American Telephone and Telegraph Company,* 552 F.Supp. 131 (D.D.C. 1982). In that case, this court indicated that purpose of the antitrust laws was to ''preserv[e] free and unfettered competition as the rule of trade.''*Id.* at 149 (quoting from *Northern Pacific Railway Co.* v. *United States,* 356 U.S. 1 (1958)). Within that purpose, an antitrust remedy, including a consent decree, must ''leave the defendant without the ability to resume the actions which constituted the antitrust violation in the first place'' or ''effectively foreclose the possibility that antitrust violations will occur or recur.'' *Id.* at 150. In addition, ''antitrust violations should be remedied with as little injury as possible to the interest of the general public' and to relevant private interests.'' *Id.* at 150 (quoting from *United States* v. *American Tobacco Co.,* 221 U.S. 106 (1911)).

II

The final judgment proposed by the parties in this action is deficient in a number of respects, and is not in the public interest.

The Attorney General of Nebraska believes that the final consent judgment proposed by the parties in this case is deficient in the first instance because it does not take into account the wider context of vertical consolidation in the nation's agribusiness system, and instead focuses solely on the grain buying activities of Cargill and Continental. Consolidation across vertically-related markets is increasingly leading to the creation of all-inclusive food supply chains in the United States where one company or interrelated group of companies can control certain agricultural commodities from their creation at the genetic level to their ultimate purchase by the consumer. This sort of vertical consolidation will harm competition by making entry into the affected markets more difficult, by making the extent of actual competition more difficult to estimate, and by forcing independent farmers and producers out of business. Allowing the merger of Cargill and Continental will make further agribusiness consolidation more likely. For one thing, acquisition of Continental's seventy grain elevators will enhance Cargill's economic power generally, and allow deployment of that economic power across a wide range of other agricultural sectors including beef packing, cattle feedlots, pork packing, broiler production, turkey production, flour milling, soybean crushing and ethanol production. That enhanced economic power will also allow Cargill to transfer resources across markets without regard to competitive conditions. As a result, the government should have considered more than the grain buying operations of Cargill in evaluating this merger.

The proposed final consent judgment also fails to recognize that grain handling and grain merchandising is a nationwide and worldwide business. In that regard, as noted in the competitive impact statement filed herein, Cargill is the second largest grain trader in North America and the largest U.S. grain exporter. Continental is the third largest grain trader in North America and the third largest U.S. grain exporter. Merger of those market shares cannot help but increase the concentration in the national and global grain trading and grain exporting markets to questionable levels with damaging effects upon farmers and consumers in Nebraska and other agricultural states. Yet, the government's proposed final consent judgment focuses only on grain trading activities in a small number of regional markets.

The Attorney General of Nebraska is aware of the decision in *United States* v. *Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995). Consequently, the remainder of this amicus curia brief will focus on specific deficiencies with respect to the matters alleged in the government's Complaint in this case and the proposed final consent judgment presented to the court.

A. The final consent judgment fails to take into account the size and organization of the sellers in the markets affected by the proposed merger.

In a number of merger cases, courts have given credence to the notion that a merger resulting in a larger, more powerful firm may be permissible if the companies the merged firm sells to also possess market power. *United States* v. *Baker Hughes, Inc.,* 908 F.2d 981, 984 (D.C. Cir 1990); *F.T.C.* v. *Elders Grain, Inc.,* 868 F.2d 901, 905 (7th Cir. 1989). For example, in *United States* v. *Country Lake Foods, Inc.,* 754 F.Supp. 669 (D.Minn. 1990), the district court recognized the ability of large food corporations which were milk purchasers to act as a check to the market power of milk processors in a merger involving the fluid milk processing industry because the food corporations could respond aggressively to price increases and had the capital resources necessary to vertically integrate fluid milk processing. That reasoning forms the basis for the ''power buyer'' defense to merger enforcement.

If the presence of ''power buyers'' in a particular market helps to make a proposed merger more acceptable, it necessarily follows that the lack of such ''power buyers'' makes a merger less acceptable, because powerful sellers in a given market can use their market power to exploit small and disorganized buyers. For example, in *United States* v. *Tote, Inc.,* 768 F.Supp. 1064 (D. Del. 1991), the court rejected the power buyer defense because there were a large number of small buyers in the market at issue. For that reason, among others, the court held the merger in question to be anticompetitive. See also *F.T.C.* v. *Cardinal Health, Inc.,* 12 F.Supp.2d 34 (D.D.C. 1998).

The reasoning underlying the power buyer defense should also be applied equally in evaluating the competitive effects of a merger in an oligopsony situation. In other words, the anticompetitive effects of a merger involving a small number of possible buyers should be evaluated, in part, by measuring the number and power of the sellers for those buyers. If the sellers are numerous, disorganized and small, then they will be unable to respond to the anticompetitive exercise of market power by small group of powerful buyers. That is precisely the situation in the present case where a small group of buyers in the grain buying and marketing industry are able to exert anticompetitive power over numerous, disorganized and small farmers selling grain. That situation will be exacerbated by the merger proposed under the final consent judgment in this case, and for that reason, the final judgment is not in the public interest.

B. The proposed final consent judgment does not take into account the potential for continuing anticompetitive behavior in the post-merger market.

In its Complaint, the government argues that very few firms buy grain within particular draw areas. Government Complaint, p.4. The government then contends that in those ''captive draw areas, [a merged] Cargill would be in a position unilaterally, or in coordinated interaction with the few remaining competitors, to depress prices paid to producers and other suppliers because transportation costs would preclude them from selling to purchasers outside the captive draw areas in sufficient quantities to prevent the price decrease.'' Government Complaint, p.4. To remedy this problem in the context of the proposed merger, the government simply proposes divestitures in a few of the captive draw areas. However, even with the divestitures proposed by the Department of Justice, grain buying in the post-merger markets in the captive draw areas at issue will still remain heavily concentrated and susceptive to collusive and cooperative activity among the remaining grain buyers. As a result, the proposed final consent judgment will not effectively foreclose the possibility that antitrust violations will occur in the future in the captive draw areas. For that reason, it is deficient.

C. The proposed final consent judgment fails to take into account the impact of global sales or grain buying in the United States.

A great deal of the grain purchased by Continental and Cargill is sold overseas where purchases are based upon factors such as geographic area, historic preference or long-term contracts. Those factors often reduce the need for competition in buying American grain. However, the proposed final consent judgment fails to take those global market factors into account in determining what is necessary to maintain competitive grain buying in the United States.

D. Under the proposed final consent judgment, there is no assurance that the portions of Continental's operations which are divested can or will remain a competitive force in the markets in question.

The government notes, in its Complaint, that ''[g]rain traders such as Cargill and Continental operate extensive grain distribution networks, which facilitate the movement of grain from farms to domestic consumers of these commodities and to foreign markets.'' Government Complaint at 3. Given this need for ''extensive grain distribution networks.'' it is unclear as to how the remnants of Continental divested as a result of the final consent judgment will compete effectively in the markets where they are located, since they may not be part of such a distribution network with its competitive flexibility and access to information about grain flows. In addition, the acknowledged need for ''extensive grain distribution networks'' in these markets will make it highly unlikely that new firms will enter these markets and provide additional competition. Indeed, the Department of Justice concedes in its Complaint that new entry into the grain buying business is unlikely. Government Complaint at 6.

E. The proposed final consent judgment fails to take into account the effects of removal of Continental as potential competitor to Cargill.

In *United States* v. *Penn-Olin Chemical Co.,* 378 U.S. 158, 173–4 (1964), the United States Supreme Court stated:

> [t]he existence of an aggressive, well equipped and well financed corporation engaged in the same or related lines of commerce waiting anxiously to enter into an oligopolistic market would be a substantial incentive to competition which cannot be underestimated.

In the present case, Continental currently possesses the grain distribution network and other resources to potentially challenge Cargill in the grain buying business. With Continental taken out of that business as a result of the merger proposed herein, Cargill will face much less pressure to pay competitive prices and compete in grain buying markets. This is particularly true given the difficulty of entry into the market by new firms.

F. The final consent judgment fails to take into account other statutes which Congress intended should be considered in making determinations regarding agricultural markets.

A primary rule of statutory construction is that when a court interprets multiple statutes dealing with a related object or subject, those statutes are *in pari materia* and should be construed together. *Common Cause* v. *Federal Election Commission,* 842 F.2d 436 (D.C. Cir. 1988); *Linquist* v. *Bowen,* 813 F.2d 884 (8th Cir. 1987). Essentially, if a number of separate statutes relate to the same thing, they are *in pari materia,* and all ought to be taken into consideration in construing any one of them. *United States* v. *Freeman,* 44 U.S. 556 (1845). In the area of agricultural markets, Congress has passed a number of statutes in addition to the provisions of the Sherman Act and the Clayton Act which are *in pari materia* with those antitrust statutes because they reflect congressional concerns about economic concentration and the disproportionate bargaining power of farmers. All of those statutes should have been considered in fashioning the proposed final consent judgment in this case. Because they were not, that final consent judgment is deficient.

First of all, the Department of Justice failed to consider the implications of the Packers and Stockyards Act of 1921, 7 U.S.C. 181 *et seq.* (the ''PSA''), in developing the final consent judgment. The PSA was passed after the Sherman, Clayton and Federal Trade Commission

Acts, and was designed to go beyond the broad language of those statutes. *Wilson & Co.* v. *Benson,* 286 F.2d 891 (7th Cir. 1961). Among other things, the PSA was directed at the lack of competition between agricultural buyers and the attendant possible depression of producers' prices. *Swift & Co.* v. *United States,* 393 F. 2d 247 (7th Cir. 1968). In the present case, one of the government's concerns with the proposed merger is that prices paid to farmers could be depressed in a post-merger market. Government Complaint at 6. The PSA supports the notion that particular attention should be directed to mergers which implicate marketing for farmers.

Another statute with implications for the merger under consideration which was not considered by the government is the Capper-Volstead Act, 7 U.S.C. 291–2. That statute specifically exempted agricultural cooperatives from the antitrust laws because Congress intended to treat farmer cooperatives differently from typical corporations and to give farmers the opportunity to build their bargaining power relative to corporate buyers. *Fairdale Farms, Inc.* v. *Yankee Milk, Inc.*, 635 F.2d 1037 (2nd Cir. 1980). This was done deliberately to enable farmers to organize and work together so as to obtain and exercise marketing power. *Kinnet Dairies, Inc.* v. *Dairymen, Inc.*, 512 F.Supp. 608 (M.D. GA. 1981). Any merger which works against those principles to increase the power of buyers at the expense of farmers should therefore be subject to special, heightened scrutiny.

Finally, the proposed final consent judgment fails to consider the implications of the Agricultural Fair Practices Act of 1967, 7 U.S.C. 2301–2306 (the ''AFPA''). That Act was intended to prevent corporations from interfering in the formation of collective marketing organizations involving farmers. The overriding purpose of the legislation was the protection of farmers' rights to organize cooperatively. *Butz* v. *Lawson Milk Co.*, 386 F.Supp. 227 (N.D. OH. 1974). Again, AFPA's recognition of the potential for abusive practices by agricultural processors shows congressional concern with the potential market power of agricultural buyers which should have been reflected to a greater degree in the final consent judgment which is now before this court.

G. The final consent judgment fails to set out any benefits or efficiencies of the proposed merger.

The Department of Justice obviously has concerns about the anticompetitive effects of the merger in this case as witnessed by the divestitures required in the proposed final consent judgment and the other allegations in the Complaint. Yet, the papers prepared by the government do not set out any reasons for approving the proposed merger after the divestitures such as post-merger efficiencies which will result from the action. Absent any economic benefits resulting from the merger in this case, it is difficult to understand how this merger can be in the public interest in light of the other potential anticompetitive problems set out above.

III

If necessary, this court should appoint a special master to assist in determining if the proposed final consent judgment in this case is in the public interest

For all the various reasons set out above, the Attorney General of Nebraska contends that the proposed final consent judgment in this case is not in the public interest as required by 15 U.S.C. 16(e). However, should this court not determine that such a finding is appropriate at the present time, the Attorney General of Nebraska urges the court to appoint a special master in this case as contemplated by 15 U.S.C. 16(f) to hear evidence and to make a recommendation to the court as to the efficacy of the proposed final consent judgment. The appointment of a special master in this case is based upon the complex nature of the agricultural markets at issue and the various statutes discussed above which interact upon the application of the antitrust laws in this context.

Conclusion

For the reasons discussed above, the Attorney General of Nebraska, as amicus curiae, urges the court to reject the proposed final consent judgment in this case as not in the public interest. Alternatively, the Attorney General of Nebraska urges the court to appoint a special master in this case who can assist the court in analyzing the particular agricultural markets at issue.

Dated this 21st day of October, 1999.

Don Stenberg, #14023

Attorney General of Nebraska.

Dale A. Comer, #15365

Assistant Attorney General, 2115 State Capitol, Lincoln, NE 68509–8920, Tel: (402) 471–2682.

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Brief Of The Attorney General Of Nebraska As *Amicus Curiae* has been served upon the parties herein by mailing each of those parties a true and correct copy of the same, via first-class United States Mail, postage prepaid, addressed to the parties' counsel of record as follows:

Robert L. McGeorge, Esq.,

Attorney, U.S. Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Marc G. Schildkraut, Esq.,

Howrey & Simon, 1299 Pennsylvania Avenue, NW, Washington, DC 20004.

Paul T. Denis, Esq.,

Swidler, Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300, Washington, DC 20007–5116.

Jack Quinn, Esq.,

Arnold & Porter, 555 Twelfth Street, NW, Washington, DC 20004.

On this 21st day of October, 1999.

Dale A. Comer,

Assistant Attorney General.

Attorney General of New Mexico

6301 Indian School Rd., NE., Suite 400, Albuquerque, New Mexico 87110; (505) 841–8098, FAX: (505) 841–8095

October 12, 1999.

FACSIMILE NUMBER (202) 307–2784

Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

Re: United States v. Cargill, Incorporated and Continental Grain Company, Case Number 1:99CV0187 (GK)

Dear Mr. Fones: I want to take this opportunity to express my concerns for small farmers and ranchers and the serious threats I believe they face from the ever-increasing rate of consolidation in agricultural industries, of which the pending Cargill-Continental Grain Company transaction is but one example.

Not only is consolidation occurring on a horizontal level—that is between direct competitors—but large, economically powerful companies are becoming more vertically integrated. Increasingly, these vertically integrated companies are able to exercise significant power over the food chain, all the way from production to the packaged product. This can have serious adverse effects on our economy and the important role performed by small farmers and ranchers throughout our nation. As Minnesota Attorney General Hatch pointed out in his May 7, 1999 letter concerning this matter to United States Assistant Attorney General Klein, and consistent with the comments submitted to you by Attorney General Don Stenberg of Nebraska dated September 7, 1999, reliable studies indicate that the gap between rising food retail prices and falling prices to farmers and ranchers has been growing for some time. This widening gap is the result, at least in part, of growing economic power of vertically integrated agribusinesses and increasingly concentrated markets and suggests that these markets may

already be dysfunctional in some important ways.

Given the state of the law interpreting Section 7 of the Clayton Act, I do not challenge the consent judgment proposed by the Department of Justice in this matter as being legally or factually unsupported. Certainly the divestitures and other provisions required by the proposed consent judgment ought to ameliorate the anticompetitive effects of the acquisition to some extent. However, even with the required divestitures, this transaction will likely decrease the number of significant competitors in the national grain trading market in the United States. It will also bolster Cargill's already significant market presence both in markets in which Cargill and Continental currently are direct competitors and in markets such as those in the areas of animal feed, feeding cattle and processing cattle, in which Continental is not currently a significant competitor.

Thus, I would urge that these difficult issues be dealt with as comprehensively as possible and that to the extent possible the Department of Justice actively advocate administrative and legislative responses that will enhance and invigorate competition in the agricultural sector of our economy. In addition, the antitrust laws in this sector of the economy should be effectively and timely enforced, especially to protect the valuable interests of small farmers and ranchers. I hope that any additional moves toward further concentration in agricultural markets will be carefully and thoroughly scrutinized.

Sincerely yours,

Patricia A. Madrid,

Attorney General.

cc: Attorney General Michael Hatch
Attorney General Don Stenberg

State of North Dakota, Office of Attorney General

State Capitol, 600 E Boulevard Ave, Bismarck, ND 58505–0040; (701) 328–2210; Fax (701) 328–2226.

October 11, 1999.
Mr. Roger Fones,
Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, US Department of Justice, 325 7th St. NW, Rm 500, Washington, DC 20530.

Dear Mr. Fones: The following comments are submitted concerning the proposed merger of Cargill, Incorporated, and Continental Grain Company. Because there is little competition between Cargill and Continental on the local level in North Dakota, my principal concern has been with this merger's potential impact on the grain export market. It is encouraging that the Antitrust Division responded to these concerns by requiring divestiture by Cargill of its Seattle port elevator and by placing limitations on any future throughout agreement with the subsequent acquirer of that facility.

Nevertheless, I continue to have serious concerns about the increasing consolidation among the agribusiness firms who purchase the output of North Dakota's farmers. I am disappointed with the apparent inability of present day antitrust law to prevent this consolidation and the resultant injury to our farmers, the producers of the agricultural bounty our country enjoys.

Over the past decade, we have witnessed ever-larger mergers among ever-more-concentrated competitors. And all that the antitrust enforcement agencies, my own included, seem capable of doing in response is to tinker around the edges. At a minimal cost of a few divestitures and some relatively insignificant restrictions on post-merger conduct, agribusiness companies in the livestock, meatpacking industries, and now the grain industry continue to grow larger, more concentrated and more powerful. As a result, our farmers now confront the most powerful concentrations of global economic interests the world has ever known.

The economic history of North Dakota agriculture is largely the story of the unequal balance of power between our farmers and the large agribusiness and transportation interests with which they must deal. While producer cooperatives have played a significant role in counter-balancing these economic forces and hold substantial promise for the future, economic disorganization is the natural result of having a large number of farmers, geographically dispersed and producing a wide variety of commodities. The original antitrust laws were enacted over one hundred years ago in significant measure in response to calls to protect farmers from the ravages of raw economic power and to moderate its negative effects on society.

Unfortunately, these laws and the modern trends in their enforcement are proving inadequate to the task. Modern antitrust policy has lost sight of its agrarian roots. The farm sector is hemorrhaging and that bedrock institution, the family farm, is in mortal danger as a result of low commodity prices brought on, in part, by the imbalance of economic forces the antitrust laws were supposed to prevent.

I believe that the time has come to rethink antitrust analysis, particularly in the farmer-agribusiness context. It is time to forthrightly address the failures of economic analysis in this areas as well to give greater consideration to the importance of non-economic concerns in antitrust enforcement. I intend to work with my fellow state attorneys general to initiate this process. I hope that we will be able to count on the Antitrust Division for assistance as we proceed.

In light of the above comments, I would ask that the Antitrust Division reconsider its approval of this merger.

Thank you for your consideration of these comments.

Sincerely,

Heidi Heitkamp,

Attorney General.

State of South Dakota Office of Attorney General, 500 East Capitol Avenue, Pierre, South Dakota 57501–5070; Phone (605) 773–3215, FAX (605) 773–4106

October 5, 1999.
Roger W. Fones,
Chief, Transportation, Energy, and Agricultural Section, Antitrust Division, United States Department of Justice, 325 7th Street, NW, Room 500, Washington, DC 20530.

Re: *United States of America* v. *Cargill Incorporated and Continental Grain Company.*

Dear Mr. Fones: In my capacity as Attorney General of the State of South Dakota I am filing these written comments in opposition to the proposed consent decree in the above referenced action pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

As you are aware, prior to the Department of Justice's proposed consent decree, I joined the Minnesota Attorney General's letter expressing opposition to Cargill Inc.'s proposal to acquire the worldwide commodity marketing business of Continental Grain Company and urged the Department of Justice to oppose the proposed merger. It was, and still is my opinion, that the proposed merger may well reduce competition. The resulting consequences on South Dakota's agricultural industry could be serious. While the proposed consent decree would require Continental to divest itself of a couple of port, river and rail elevators and would prohibit Cargill from acquiring certain interests and require entry into a throughput agreement, these measures are simply inadequate to fully address the long term consequences of this merger of two global grain industry giants.

The Department of Justice, in its Complaint and Competitive Impact Statement, distinctly explained that if the acquisition of Continental's worldwide commodity marketing business is permitted to proceed, there will be a substantial lessening of competition for grain purchasing services to farms and other suppliers. As the Department of Justice further explained, this will likely result in many American farmers and other suppliers receiving lower prices for their grain and oil seed crops. The proposed consent decree simply does not go far enough to prevent the occurrence of the events contained in these legal documents.

The Cargill/Continental merger is not adequately addressed by simply dealing with market implications of the merger on a region by region basis. The geographic market for grain is nationwide with worldwide implications.

Further, it does not appear that Department of Justice has adequately considered whether the divested remnants of Continental will be a competitive force given the nature of the grain market. It also appears that the Department of Justice did not adequately consider the economic disparities that currently exist in the grain market power over this nation's farmers who are many in number and wield very limited power. The merger only increases this disparity.

The federal antitrust laws were enacted over a hundred years ago in part to address the large agricultural trusts that existed in the late 1800's. As a result these large trusts were broken up. Now, despite the antitrust laws, we are experiencing increasing concentration in all areas and aspects of the agricultural industry. The concentration is both vertical and horizontal in nature. Such concentration and resulting market power is the problem

that the antitrust laws were intended to rectify. If a merger of the magnitude of that proposed between Cargill and Continental is allowed to go forward as currently proposed in the consent decree, the purpose behind antitrust laws will be defeated. This would be a very big step backwards.

South Dakota has the smallest attorney general's office in the nation. I simply do not have the resources to take on this merger and neither do the offices for the surrounding states. No matter how much myself and the Attorneys General of the surrounding states are opposed to the merger we are not in a position to go to war with Cargill and Continental. Only the Department of Justice is sufficiently staffed and financed to contest a merger of this size.

As the Attorney General from an agricultural state, I have witnessed first hand the devastating impact upon ranchers and farmers that can result from market concentration by commodity purchasers. The proposed merger will only make the situation worse. The grain and livestock products produced by this nation's farmers and ranchers are the lifeblood to this great country. The Department of Justice should do whatever is necessary to preserve the ability of our farmers and ranchers to conduct business in a competitive, free and open market place. Only the prevention of the proposed merger is an adequate remedy. The proposed consent decree is simply inadequate and as such I object to its entry.

Yours truly,

Mark Barnett,

Attorney General, State of South Dakota.

Tab 3

American Agriculture Movement

AAM Inc., 2898 Audrain Road, #114, Sturgeon, MO 65284

October 10, 1999.

Chief, Transportation, Energy, & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh St., N.W., Suite 500, Washington, DC 20530.

Dear Roger W. Fones: Please place these comments in the **Federal Register**.

AAM wants to state its opposition to:

Cargill's announced purchase of Continental Grain's merchandising business;

Smithfield Foods purchase of Murphy Family Farms and Tyson Food's Pork Group.

Oligopoly is just a fancy word for monopoly. The Clayton & Sherman Antitrust Laws were enacted after the release of *THE JUNGLE* by Sinclair Lewis concerning excesses in the slaughter industry. Today's excesses are more extreme but hurt farmers and ranchers more directly and pose a threat to the consumer. The U.S. cheap food policy will fail with the continued disregard of these laws.

With the present trend to consolidation in the livestock industry, 3 or 4 vertically integrated companies not only disproportionately control several livestock sectors but food production, distribution and sales. This removes all pretense of fair and open competitive markets.

The Packers And Stockyard Act must also be rigidly enforced to protect small and medium livestock producers.

Sincerely,

Edward M. Fashing,

Missouri Vice President Communications.

Animal Welfare Institute

P.O. Box 3650, Washington, D.C. 20007–0150; Telephone: (202) 337–2332, Fax (202) 338–9478

October 11, 1999.

Hon. Gladys Kessler,

Fax: 202–354–3442.

Dear Judge Kessler: I am writing to respectfully request that the deadline for comment on the Cargill/Continental acquisition be extended by the Department of Justice for another sixty days to December 12, 1999.

It is my understanding that the Department of Justice states, ''The court's role in protecting the public interest is one of ensuring that the government has not breached its duty to the public in consenting to the decree.''

I address this letter to you because of the Department's failure to act in the blatant current case affecting millions of animals suffering in hog factories: the acquisition by Smithfield Foods, first of Murphy Farms and not of Tysons hog component. All of these huge corporations employ the same cruel methods of hog production and, by their ''vertical integration,'' are destroying family farms at a terrifying pace.

Because of the studies of the Animal Welfare Institute and its long-term efforts to protect family farmers who raise pigs humanely, I am responsible, as President of the Animal Welfare Institute, for a detailed grasp of this huge problem, of which animal feed is a major component. The Cargill/Continental acquisition impinges heavily upon this feed and is harmful to the family farmers whose ability to compete in a system increasingly monopolized by agribusiness is being zeroed out.

The general public, likewise, is being cheated because the anti-trust laws are not protecting the public, as they are intended to do, by proper enforcement.

Respectfully yours,

Christine Stevens,

President.

P.S. You may be amused by the quotation from Art Buchwald which was recently brought to my attention through ''The Agribusiness Examiner,'' issued by A.V. Krebs, Editor and Publisher. I attach a copy of page 14.

ANIMAL WELFARE INSTITUTE

''THANK GOD FOR THE FREE ENTERPRISE SYSTEM''

In his book of essays Down the Seine and Up the Potomac (G. P. Putnam's Sons: 1977) political humorist Art Buchwald imagines a scenario where two corporations—Samson Securities and Delilah Company—asked the head of the Justice Department's Anti-Trust Division if the two companies could merge. At the time Samson Securities owned everything east of the Mississippi River, while Delilah Company owned everything west of the river. Initially, the head of the Anti-Trust Division indicated that he might have reservations about the merger of the only two companies left in the United States.

''Our department,'' he said, ''will take a close look at this proposed merger. It is our job to further competition in private business and industry, and if we allow Samson and Delilah to merge we may be doing the consumer a disservice.''

The chairman of Samson protested vigorously that merging with Delilah would not stifle competition, but would help it. ''The public will be the true beneficiary of this merger,'' he said. ''The larger we are, the most services we can perform, and the lower prices we can charge.''

The president of Delilah backed him up. ''In the Communist system the people don't have a choice. They must buy from the state. In our capitalist society the people can buy from either the Samson or the Delilah Company.''

''But if you merge,'' someone pointed out, ''there will be only one company left in the United States.''

''Exactly,'' said the president of Delilah. ''Thank God for the free enterprise system.''

The Anti-Trust Division of the Justice Department studied the merger for months. Finally the Attorney General made this ruling. ''While we find drawbacks to only one company being left in the United States, we feel the advantages to the public far outweigh the disadvantages.''

''Therefore, we're making an exception in this case and allowing Samson and Delilah to merge.''

''I would like to announce that the Samson and Delilah Company is now negotiating at the White House with the President to buy the United States. The Justice Department will naturally study this merger to see if it violates any of our strong anti-trust laws.''

Catholic Charities, Diocese of Sioux City

October 6, 1999.

Roger W. Fones,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, D.C. 20530.

Dear Sir: We are writing in regard to the Department of Justice's ''Final Judgement'' relative to Cargill's purchase of Continental Grain's grain merchandising division.

It is our understanding that the Department filed a formal ''Complaint'' with the U.S. District Court charging that Cargill's purchase would ''substantially lessen competition for the purchase of corn, soybeans and wheat in each of the relevant geographic markets, enabling it unilaterally to depress prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans and wheat in these markets will engage in anticompetitive coordination to depress farm prices.''

We also understand that on the same day this ''Complaint'' was filed, the Department filed a consented ''Final Judgement'' agreed to by all parties.

This makes no sense to those of us who agree with the Department's own finding in its ''Complaint''.

This purchase, if approved in its present form, will further accelerate the vertical integration of the agricultural sector with dire consequences for family farm agriculture, rural America and the consumers of our food supply.

We urge the Department of Justice to withdraw its ''Final Judgement''; reaffirm the adverse impact of the Cargill purchase upon the economic and social structure of rural America and to stand by its original ''Complaint''.

Very truly yours,

Marilyn Murphy,

Social Concerns Facilitator/Rural Life Contact.

Clean Water Action Alliance

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530.

Re: *United States of America* v. *Cargill, Inc. and Continental Grain Company*

Dear Mr. Fones: I am writing on behalf of our organization to object to the proposed final judgment in this case. The approval of the consent decree is not in the public interest and is not consistent with the public policy underlying federal antitrust laws. Our organization has over 40,000 members statewide. We are concerned with the growing concentration in agriculture and the resulting economic impact on family farmers and environmental degradation of our rural communities. Antitrust laws have long recognized that concentration in agricultural industries is harmful to farmers. These protections have not been enforced to prevent extensive concentration in the meatpacking and other agricultural industries which are now being controlled by a small number of agribusiness giants.

Both the DOJ/FTC and NAAG Guidelines raise serious questions and grave concerns regarding the economic effect of the proposed Cargill-Continental merger. The grain industry is already heavily concentrated, leaving farmers who sell their grain to exporters vulnerable and with very limited options. Both Cargill and Continental are among the top four corn and soybean exporters nationwide. Cargill estimates that together they will control 35% of U.S. grain exports. This type of extensive control in the market share by Cargill and Continental extends beyond grain processing to animal feed and meat-packing. If the economic power of these mega-firms is not controlled, a few large corporations will control the marketplace and our food supply which is harmful to both farmers and consumers.

The federal antitrust laws are important to allow every business entity—no matter how small—the freedom to compete. The rapid rate of concentration in the agricultural sector is threatening the ability of the small farmer to compete effectively in the marketplace. Not only are farmers suffering because of the lack of access to markets and unfair prices paid to them, but rural communities are experiencing negative economic impacts as corporate agribusiness giants continue to consolidate and control more and more of our food system. Many small towns in the state depend on farming income to support their local infrastructures—schools, banks, churches and small businesses. The trend toward vertical and horizontal integration is threatening the economic viability of these communities.

Cargill has utterly failed to addressed the above-mentioned concerns generated by excessive vertical and horizontal integration in the industry. We urge you to reject the proposed consent decree.

Sincerely,

Suzanne R. McIntosh, Esq.,

Program Director.

Farmland Co-Op Inc., A Pro Farmers Choice

P.O. Box 276, Brush, Colorado 80723; Telephone 1–970–842–5059, Fax 1–970–842–5667

October 8, 1999.

Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Dear Mr. Fones: It is my belief that the merger of Cargill and Continental Grain has to be stopped. Our farmers have realized for a long time that without market competition, they suffer from pricing that is below what can be achieved through active competition. This lack of competition threatens the future of our agricultural system. It may be all right for the large corporations and regional entities, but I have to look out for my individual farmers. I do not think you take consolidation seriously. When you look a consolidation I believe you have to look at all their activities including strategic alliances, and joint ventures. A full-blown combination of assets is not telling the whole story. Concentration of large companies is one of the reasons for lower prices even though it may be only one of many. I do not see how you can say that some of these merging companies preserve competition. If you truly believe this I would like to be able to explain that to my farmers. You as a representative our political system need to step up to the plate and address this growing concern of rapid consolidation. We need to be more pro active in our communities and in our state by even court actions to curtail market concentration.

I represent a local cooperative association of approximately 1000 producers. In conversations with the top 165 growers, I can say that they know the results and have been impacted from no competition to placed competition in the grain market in our community. In 1997 we had only one local entity purchasing grain. In 1998 after a partnership with us that opened a competitive elevator, the price offered to our growners increased $0.5 a bushel and the competitor was forced to pay for protein. Without this action, how many dollars do you think would have gone on in the hands of a large corporation? What benefit does increased concentration have on our American agriculture?

I don't know just exactly how long these mergers will take to impact our local farmers. I do not that when Farmland Industries and Cenex Harvest States consolidated their petroleum operations into Country Energy L.L.C. that we took an enormous hit on product pricing and had to go to the outside. I hated to do that, but our farmers need competition in the market place. What impact did this joint venture for most cooperatives that had not sought out other supplies? They were forced to pay a higher price for this consolidation. I'm am against these mergers if they do not benefit our producers. I just believe that we need to protect our farmers by making sure that competition continues to be strong. Just thought I would share my opinion with you.

Thank you,

Glenn A. Babcock,

General Manager.

Institute for Agriculture and Trade Policy

2105 First Avenue South, Minneapolis, MN 55404–2505

October 7, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street N.W., Suite 500, Washington, D.C. 20530.

Re: *United States of America* v. *Cargill, Inc. and Continental Grain Company*

Dear Mr. Fones: I am writing to express IATP's opposition to Cargill's proposed acquisition of Continental Grain Company, an acquisition which would unify the second and third largest grain traders in North America, which export 40 percent of American agricultural commodities.

Competition in agricultural markets is rapidly declining in the face of mergers and acquisitions and a plethora of new corporate relationships including joint ventures, strategic alliances or partnerships, interlocking directorates and partial ownership. In its analysis, the Department of Justice failed to recognize the wider concentration in agriculture markets beyond grain buying to include handling, processing and merchandising both domestically and globally.

The principle result of this concentration would be a significant increase in the imbalance of power favoring agribusiness at the expense of the farmer. This growing imbalance would exacerbate the trend toward lower prices for farmers and likely result in higher prices for consumers.

While the proposed consent decree requires divestiture of some grain elevators in certain locations, it does not, in our opinion, meet the spirit and the letter of federal anti-trust law. We must use our anti-trust laws to preserve our free market system and ensure competition that produces fair prices for both producers and consumers.

Thank you for your attention in this matter.

Sincerely,

Niel Ritchie,

Policy Analyst.

Dated: November 10, 1999.
Judge Gladys Kessler,
U.S. District Court, for the District of Columbia, 333 Constitution Ave. N.W., Washington, D.C. 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: Presently before you awaiting your approval is a ''Final Judgment'' filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

Legal precedent, according to the Department of Justice, requires that ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.—The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is within the reaches of the public interest.''

In its July 8, 1999 ''Final Judgment'' I believe in fact that the Department of Justice has ''breached its duty to the public in consenting to the decree'' and that its ''Final Judgment'' is not ''within the reaches of the public interest.''

Clearly, as the Department of Justice's own ''Complaint'' states the Cargill purchase would ''substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices.''

Using the Department of Justice's own figures and criteria we see in its ''Complaint'' that even before this announced purchase the U.S. grain trade was already dominated, if not monopolized, by Cargill and nothing in the Department of Justice's ''Final Judgment'' addresses itself to that important issue.

Likewise, the Department of Justice must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors.

For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest), pork packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess, Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets. Cargill will become an even more powerful and ''sophisticated'' firm, even more capable of strategic, cooperative, and anti-competitive behavior.

As the Kansas Cattlemen's Association Chairman I, Michael L. Schultz am acting on behalf of our members to state that we are opposed in the continual mergers and acquisitions that are becoming common place in our society. These mergers do have detrimental effects on our communities by taking the wealth out of the community and destroying competition and family life, which is what built this country.

We have seen the effects of the consolidation in the cattle industry and its negative effects on our industry and communities. It is mentally conditioning that has taken over, along with great amounts of money from the corporations to pressure the political and legal systems to allow these mergers to continue. We are not sure where it will end, possibly when we have 1 company in the U.S.A., Russia and China then will we have enough consolidation in our society.

We ask that you enforce the anti-trust laws to ensure competition in the market, once competition is reduced the corporations will not pass the savings or profits back to the producers or consumers of which they claim. A great example for doing the reverse is the breakup of Ma-Bell. It produced more competition in the telecommunication industry and now we have competition, great phone rates, cellular service, etc. This is what drives creativity and healthy communities. In Kansas a population of less than 3300 serves over 80% of the communities. We do need your support to end the death of our communities, competition will ensure that small communities survive.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States I urge you to recommend that the Department of Justice withdraw its ''Final Judgment,'' study in far greater detail this ill-advised sale and carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Michael L. Schultz,

Chairman, Kansas Cattlemen's Association.

Minnesota Catholic Conference

475 University Avenue W., St. Paul, Minnesota 55103–1996) Phone (651) 227–8777, Fax (651) 227–2675

September 23, 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, 325 Seventh Street N.W., Suite 500, Washington, D.C. 20530.

Re: United States of America v. *Cargill, Inc. and Continental Grain Company*

Dear Mr. Fones: Pursuant to the Antitrust Procedures and Penalties Act, I am writing to object to the proposed final judgment in this case. The approval of the consent decree is not in the public interest and is not consistent with the public policy underlying federal antitrust statutes.

The proposed consent decree requires divestiture of certain grain elevators in specified locations, but otherwise approves the merger of the second and third largest grain traders in North America, which export 40 percent of American agricultural commodities. This continued concentration of commodity exporters violates the spirit and the letter of the federal antitrust laws.

The increasing concentration in agricultural marketing and processing will mean continued low prices for farmers and higher prices for consumers. It was this very type of concentration, which lead to the creation and passage of the first federal antitrust laws.

The primary flaw in the U.S. Justice Department's analysis is that it failed to recognize the wider concentration in agriculture markets beyond grain buying to include grain handling and merchandizing both a nationwide and worldwide business.

The proposed merger between Cargill and Continental fails to explain what benefits will be produced. The economies of scale of these two corporations merging will not lead to increased profits. Rather, the increased profits will come on the backs of the farmers receiving a lower price for their grain and consumers paying higher prices for their products, the very consequence antitrust statutes seek to prevent.

Catholic Social Teaching states a firm belief in the principle that the economy exists for the people, not the people for the economy; In this merger there is a threat to that principle and therefore I urge you to reject the proposed consent decree.

Sincerely,

Thomas (Toby) Pearson,

Director of Social Concerns, Minnesota Catholic Conference.

Missouri Farm Bureau Federation

P.O. Box 658, 701 South Country Club Drive, Jefferson City, MO 65102 / (573) 893–1400

July 13, 1999.
Mr. Roger Fones,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, US Department of Justice, 327 7th Street, NW, Suite 500, Washington, DC 20530.

Dear Mr. Fones: We appreciate the Justice Department's scrutiny of the proposed sale of Continental Grain Company's Commodity Marketing Group to Cargill, Incorporated and believe the stipulations included in the consent decree are warranted. The preservation of competition at the local level is of the utmost importance; agricultural producers can ill afford consolidation that further depresses commodity prices. While the Justice Department complaint states the proposed Cargill/Continental sale would have adversely affected competition in some

areas, we urge the Justice Department to conduct a similar review of purchase offers made for the facilities is which divestiture is required.

Specifically, we have been contacted by producers in southeast Missouri who are concerned that Continental's Cottonwood Point facility may be sold to an entity that would also have an excessive influence on the local grain market. Specifically, there are rumors circulating that Bunge may be interested in this facility. We cannot stress enough the importance of preserving competition for agricultural products, regardless of who the principal parties are.

We urge the Justice Department to scrutinize every offer to purchase facilities that are offered for sale as a result of the Cargill divestiture and prevent any further erosion of marketing options available to agricultural producers.

Sincerely,

Charles E. Kruse,

President.

Missouri Soybean Association

P.O. Box 104778, 520 Ellis Blvd., Suite N, Jefferson City, MO 65101; Phone: (573) 635–3819, Fax: (573) 635–5122

August 24, 1999

Mr. Roger Fones,

U.S. Department of Justice, Washington, DC 20530.

RE: Civil Action #991875 Filed 7–8–99

Dear Mr. Fones: The Missouri Soybean Association represents nearly 2,000 soybean farmers across the state of Missouri. We have been very vocal expressing our concern about the consolidation within our agricultural industry. We want to thank you for keeping a protective eye out for too much consolidation resulting in lack of competition and unfair prices to our farmers.

We understand Bunge Grain Company is interested in purchasing the Continental Grain Cottonwood Point elevator located in Southeast Missouri. We fear that purchase would eliminate competition in that area since this acquisition would give them a total of seven elevators within a fifty-mile radius.

We would encourage you to carefully look at all the options available for purchasing the Cottonwood Point elevator to determine which of the large grain-trading firms, including Cargill, would offer the best long-term fair prices for Southeast Missouri grain producers.

Please let me know if you have any questions on this matter. Thank you for your attention to this important agriculture issue.

Sincerely,

Dale R. Lugwig,

Executive Director/CEO.

National Catholic Rural Life Conference

4625 Beaver Avenue, Des Moines, Iowa 50310–2199; (515) 270–2634

October 8, 1999.

Judge Gladys Kessler,

U.S. District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001.

Re: United States of America v. Cargill and Continental Grain

Dear Judge Kessler: Presently before you and awaiting your approval is a ''Final Judgment'' filed by the U.S. Department of Justice regarding the purchase by Cargill Corp. of the grain merchandising division of Continental Grain Co.

According to the Department of Justice, legal precedent requires that the ''balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is within the reaches of the public interest.''

In its July 8th ''Final Judgment'', the Department of Justice appears to have breached its duty to the public in consenting to the decree, and we believe that its ''Final Judgment'' is not ''within the reaches of the public interest.''

The Department of Justice's own ''Complaint'' states the Cargill purchase would ''substantially lessen competition for purchases of corn, soybeans and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans and wheat in these markets will engage in anticompetitive coordination to depress farm pieces.''

The Department of Justice needs to take into full consideration the existing dominant position of Cargill in our nation's grain trade. The acquisition of Continental Grain's elevators (numbering 70) will enhance the economic power of Cargill. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a nearly complete range of agricultural sectors: Cargill has a dominant position in beef packing, cattle feedlots, pork packing, poultry production, animal feed plants, grain elevator capacity, flour milling, corn milling, soybean crushing and ethanol production. Such a dominant position across many agricultural markets allows Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

The ability to transfer assets also allows Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. With the additional assets of Continental Grain, Cargill will become an even more powerful firm and ever more capable of strategic anti-competitive behavior.

The National Catholic Rural Life Conference has stood with small farmers and rural communities since our inception in 1923. Besides the farm crisis of the 1980s, we have used our voice to defend the family farm system throughout the 20th century as corporate and industrial interests have eroded our nation's rural communities. Once again we raise our voice in solidarity with the vulnerable individuals and families who are often overlooked when large mergers or acquisitions take place in our food and agriculture system.

In the name of economic and social justice and the preservation of an independent and locally-controlled family farm system of agriculture in the United States, we urge you to recommend that the Department of Justice withdraw its ''Final Judgment''. We ask that this ill-advised acquisition by Cargill undergo far greater study in respect to antitrust issues and the dire consequences to both producers and consumers of our food supply.

Respectfully,

Brother David Andrews, CSC,

Executive Director.

NFO Kansas

1783 Barn Road, Solomon, KS 67480, 785–479–2183

Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Mr. Fones: I am writing on behalf of our many grain farmer members in Kansas to ask that the proposed merger between Continental and Cargill grain be revisited. We strongly, passionately feel that this violates the intentions of pro-competitive marketplace acts such as the Clayton Act provides.

Our organization is a bargaining group. Anytime two major buyers like these companies join together, it lessons the strength of farm bargaining.

Please extend the comment period for another 60 days and revisit this issue.

Thanks.

Sincerely,

Ray Kohman,

Kansas NFO President.

Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Mr. Fones: On behalf of our members in Kansas National Farmers, we would like at request that the merger between Cargill and Continental be NOT allowed. Our organization passed a resolution at our state annual meeting in August which opposed this ''Giant of Mergers.''

We are very concerned about the lack of enforcement on anti-trust issues today. Our very livelihoods are at stake due to increasing market channel monopolization. We feel that our ability to get competitive bids will be reduced and we feel that grain ''basis levels'' will decline due to ''Price Leadership'' strategies.

Please conduct a more thorough investigation into the Cargill/Continental Grain sale before submitting a Final Judgment on the matter. Also, please extend the public comment period for another sixty days.

Thank You!

Greg Stephens,

Kansas NFO National Director, 842 S. 10th, Salina, KS 67401.

National Farmers Union

400 Virginia Avenue, S.W., Suite 710, Washington, D.C. 20024, Phone (202) 554–1600

October 7, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530.

Re: *United States of America v. Cargill, Inc. and Continental Grain Company*

Dear Mr. Fones: On behalf of the 300,000 farm and ranch families of the National Farmers Union, I write to express our strong opposition to the acquisition of Continental Grain company by Cargill, Inc.

We agree with the allegation in the complaint that alleges the merger would substantially lessen competition for grain purchasing service to farmers and other suppliers in many areas in the United States. We also agree that the merger would increase concentration in the delivery point for settlement of Chicago Board of Trade contracts. And, we agree that the covenant not to compete is an unreasonable violation of trade.

The proposed stipulation attempts to address these concerns by requiring a number of divestitures. Yet, even these divestitures are insufficient to avoid the harm that will inevitably occur to market competition if there is a merger between Cargill—the second largest grain trader in North America and the largest grain exporter, and Continental—until recently the third largest grain trader and the third largest grain exporter.

If the two firms were less dominant, the proposed divestitures may have been sufficient to insure post-merger competition within the grain market. However, when the tops firms are allowed to merge, there is no way to recoup the loss to market competitiveness.

In the countryside, Continental is known for being an aggressive grain buyer. Elevator operators report Continental will usually beat any other offer by $.02 per bushel, if given the chance. And while $.02 is inconsequential, it turns into millions of dollars when multiplied by the volume of grain that farmers and ranchers sold to Continental last year.

Cargill's extensive submission of information in public documents reveals that Cargill is already operating in the areas where Continental operates. The clear reason for this merger is the elimination of competition. There is nothing about this merger that will increase competition to either farmers or ranchers or other members of the general public. Therefore, both the Department of Justice and the Court should find that the proposed stipulation that allows the merger is not and cannot be in the public interest.

In addition to failing the public interest test, we believe the proposed enforcement mechanisms are not enforceable and are therefore, insufficient. The stipulation requires a number of divestitures in order to maintain competition. Yet, what happens if another buyer cannot be found. And, if a buyer is found, what buyer will be able to effectively compete with the newly enlarged Cargill? Once Continental Grain has been swallowed by Cargill, the damage is done. We cannot come back at a later date and have any assurance of being able to replace the loss of this competitor.

The proposed stipulation also completely fails to address the roles Cargill and Continental play as the largest and third largest grain exporters. Lack of competition in the export market has a direct impact on U.S. grain producers for two reasons: 1) exports make up an important part of our market and, 2) the domestic market is influenced by the world price. While the complaint alleges the merger will lessen competition, and estimates that collectively Cargill and Continental control approximately 40 percent of all U.S. grain exports, the stipulation does nothing to address that problem.

In addition, the only alternative to the proposed final judgment, discussed in the consent decree, is that of going to trial and obtaining a court decision similar to the proposed stipulation. The consent decree fails to consider the alternative of disallowing the acquisition.

While we appreciate that the Justice Department required a number of concessions from the merging parties, the bottom line is that there is just no way to allow this merger without causing irreversible damage to market competition. Therefore, we respectfully request that the proposed consent decree be rejected.

Sincerely,

Leland Swenson,

President.

Office of Hispanic Ministry, St. Joseph Catholic Church

320 Mulberry, Waterloo, IA 50703, 319–234–6744

September 30, 1999.

Judge Gladys Kessler,

U.S. District Court for the District of Columbia, 333 Constitution Ave. N.W., Washington, D.C. 20001.

Dear Judge Kessler: The Department of Justice's investigation and subsequent formal ''Complaint'' revealed that the nation's largest private corporation, Cargill, is attempting to overwhelmingly control the U.S. grain trade. Legal documents show that Cargill's purchase would ''substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn. soybeans and wheat in these markets will engage in anti-competitive coordination to depress farm prices.''

According to the Department of Justice, the court is required to determine, not whether this judgment to allow the Cargill/Continental sale best serves society, but whether it falls within the range of acceptability or is ''within the reaches of public interest.''

The Cargill purchase of Continental Grain facilities will increase Cargill's buying power and price control; it will decrease the markets available to farmers and cause farmers to have to transport grain farther, especially if some terminals are closed to increase corporate profits; it will position Cargill to dominate specialty or ''niche'' markets because of the acquisition of continental's storage facilities (markets that farmers are currently using to try to find profitability in already heavily Cargill-dominated markets).

I believe that every person has a right to the gifts of creations, especially to the necessities of life. Respect for the dignity of the human person also requires that each person has the right to free enterprise, the right to undertake the work that is their calling and the right to fair compensation for that work. This right is compromised when too much control is concentrated to increase the power and wealth of a few. Food, as well as the facilities for production and distribution, should not be concentrated to the benefit of a few.

Therefore I urge that you not allow the sale of Continental to Cargill. Thank you very much.

Sincerely,

Sister Kathleen Grace,

Pastoral Minister.

O.C.M.—Organization for Competitive Markets

301 South 13th Street, Suite 401, Lincoln, Nebraska 68508, (402) 434–2938

October 1, 1999.

Bob McGeorge,

U.S. Department of Justice, Antitrust Division, 3257th St. NW, Room 506, Washington, D.C. 20530.

Dear Bob: This letter seeks confirmation that your office has received our objections to the Cargill-Continental consent decree. Please advise.

Given the great interest in this merger, OCM has also requested that the Department of Justice seek an extension of the comment period, as allowed in the Tunney Act. Since many groups and individuals will need to be advised of a potential extension, OCM is interested in knowing whether DOJ will seek such an extension.

Thank you for your help in this matter.

Sincerely,

Jon K. Lauck

O.C.M.—Organization for Competitive Markets

301 South 13th Street, Suite 401, Lincoln, Nebraska 68508, (402) 434–2938

September 20, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States

Department of Justice, 325 Seventh Street NW, Suite 500, Washington, DC 20530.

Re: *United States of America* v. *Cargill, Inc. and Continental Grain Company*

Dear Mr. Fones: I am writing to you to explain OCM's opposition to Cargill's acquisition of Continental Grain Company, an acquisition which would unify the second and third largest grain traders in North America, which export 40 percent of American agricultural commodities. Specifically, OCM objects to the analysis used by the Department of Justice (''DOJ'') when reviewing the acquisition. DOB's analysis: (1) failed to consider the wider concentration in agricultural markets beyond grain buying; (2) failed to consider the continuing potential for anticompetitive behavior in the post-merger market; (3) failed to show that the divested remnants of Continental will be a competitive force absent a large network of elevators which buy grain; (4) DOJ failed to consider the impact on potential entry into grain buying markets; (5) failed to consider the nature of the grain selling market; (6) failed to consider the economic disorganization of farmers which can be exploited by powerful buyers; (7) failed to consider information disparities in agricultural markets; (8) failed to explain the benefits of the merger; (9) failed to consider a range of statutes that Congress intended courts to consider when making decisions about agricultural markets; (10) and failed to consider that the consent decree risks leaving farmers without an effective outlet for legal redress. By failing to consider the aforementioned factors, the DOJ failed to recognize how the Cargill-Continental merger posed ''a significant threat of injury from an impending violation of the antitrust laws.'' [1]

(1) DOJ failed to consider the wider concentration in agricultural markets beyond grain buying.

In recent years, agricultural processing markets have become highly concentrated. From a top-five concentration ratio of 24 percent in the early 1980s, for example, the beef-packing sector's five-firm concentration ratio has grown to 85 percent. Similar statistics apply to several other sectors of the agricultural processing economy. I have enclosed a copy of a report authorized by Professor William Heffernan of the University of Missouri that explains the extent of the concentration problem.

The DOJ's analysis did not consider the wider context of consolidation in the agricultural system and instead focused on the grain buying activities of Cargill and Continental. Growing concentration in agricultural markets should have been considered by the DOJ given the continuing consolidation of agribusiness firms. In United States v. Philadelphia National Bank, for example, in which enforcement officials stopped the merger of the second- and third-largest banks in Philadelphia, the court noted the particular importance of stopping the merger given the growing concentration in the banking market.[2] It was the growing power of agribusiness firms that triggered concerns among farmers and inspired the passage of the Sherman Act. And it was continuing concentration in agricultural markets, particularly through merger, that prompted passage of additional antitrust statutes such as the Clayton Act. The importance of the antitrust laws to farmers is explained by the difficulties inherent in farmers bargaining with large and powerful agribusiness buyers. Legislators and courts have fully recognized these concerns in statutes and in cases, respectively, but the DOJ's merger analysis failed to weigh these considerations. I have explained this background in a law reviews article entitled ''Toward an Agrarian Antitrust,'' 75 *North Dakota Law Review* (August/September 1999) which I have included for your review.

The DOJ must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors. For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest and where it plans to invest the one-half billion dollars paid by Cargill for its elevator chain), port packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time. This cross-subsidization will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and ''sophisticated'' firm, even more capable of strategic, cooperative, and anti-competitive behavior.[3]

Allowing the merger of Cargill and Continental makes further agribusiness consolidation likely. Allowing such a large-scale merger abets the recently-announced merger of Smithfield Foods, the nation's largest pork packers, with Murphy Farms, the nation's largest pork producer. The Smithfield-Murphy Farms merger sets the stage for another Cargill-Continental merger, this time involving Cargill's large-scale pork packing operation and Continental's pork producing operation, further continuing the cycle of agribusiness consolidation.

(2) DOJ failed to consider the continuing potential for anticompetitive behavior in the post-merger market:

The DOJ argues in its complaint that within particular draw areas very few firms buy grain. It argues that if Continental's operations were absorbed ''Cargill would be in a position unilaterally, or in *coordinated interaction with the few remaining competitors, to depress prices paid to producers* and other suppliers because transportation costs would preclude them from selling to purchasers outside the captive draw areas in sufficient quantities to prevent the price decrease.'' [4] Divestitures in a few of these markets as proposed by the DOJ does not address this problem. Even with the divestitures, grain buying would remain heavily concentrated and susceptible to collusive and cooperative activity.

(3) DOJ failed to show that the divested remnants of Continental will be a competitive force absent a large network of elevators which buy grain:

Furthermore, it is unclear how the divested components of Continental will remain an effective competitor with Cargill absent the former entity's large-scale elevator capacity. The few facilities that will not be acquired by Cargill hardly constitute a legitimate competitive threat. As the DOJ emphasized in its complaint, grain buying involves a large-scale network of facilities.[5] The few remaining Continental facilities, stripped of their internal networks which provide them with competitive flexibility and information about grain flows, will be powerless in comparison with Cargill, with its $51 billion in annual revenues and 81,000 employees in 60 different countries. Continental's decision to sell off its grain buying operation may also indicate that it no longer considers grain buying a priority. In short, there is no assurance that the remaining facilities will even compete in the markets that concerned the DOJ. Given the need for a network of elevators to compete in the grain buying business, it is also highly unlikely that any new firms will enter the market to challenge Cargill. The DOJ openly concedes in its complaint that it is ''unlikely that Cargill's exercise of market power will be prevented by new entry, by farmers and other suppliers transporting their products to more distant markets, or by any other countervailing competitive force.'' [6]

(4) DOJ failed to consider the impact on potential entry into grain buying markets:

Stripping Continental Grain of its internal network of elevators poses additional threats to competition. Given the difficulty of entry into the grain buying business, as conceded by DOJ, it is additionally important to hold together a firm that could potentially challenge Cargill in the many markets in which it holds a dominant position. As the Supreme Court has noted, ''[t]he existence of an aggressive, well equipped and well financed corporation engaged in the same or

[1] Zenith Radio Corp. v. Hazeltime Research Inc., 395 U.S. 100, 130 (1969). Section 16 of the Clayton Act allows individuals to sue for injunctive relief ''against threatened loss or damage by a violation of the antitrust laws.'' 15 U.S.C. § 26 (1988).

[2] United States v. Philadelphia National Bank, 374 U.S. 321, 367 (1963).

[3] For judicial recognition of the power of sophisticated firms see Michael S. Jacobs, The New Sophistication in Antitrust, 79, Minn. L. Rev. 1 (1994).

[4] Complaint, U.S. v. Cargill, Inc. and Continental Grain Company, July 8, 1999, at 4 (*italic* added).

[5] *Id.* at 3 (noting that ''Grain traders such as Cargill and Continental operate extensive grain distribution networks, which facilitate the movement of grain from farms to domestic consumers of these commodities and to foreign markets'').

[6] *Id.* at 6.

related lines of commerce waiting anxiously to enter an oligopolistic market would be a substantial incentive to competition which cannot be underestimated.''[7] Important factors in determining whether a firm may enter the concentrated grain buying market include its ''resourcefulness'' and the ''nearness of the absorbed company'' to the market, characteristics that could be attributed to a large-scale firm such as Continental Grain.[8] Without the existence of Continental's grain buying operations, Cargill will face considerably less pressure to pay farmers a competitive price for their product.

(5) DOJ failed to consider the nature of grain selling markets:

The DOJ also fails to assess the nature of grain selling markets. Much of the grain bought by Cargill and Continental is sold on world markets. But this selling is sometimes based on geographic area, historic preference, or long-term contracting. Without a guaranty of vigorous competition among grain traders for overseas customers, it is not necessary to compete vigorously for the purchase of the grain of American farmers and therefore there is no incentive to bid up the prices paid to farmers. If Cargill has a long-term arrangement with an overseas grain buyer, for example, Cargill will buy grain from American farmers when it needs to fulfill its obligation. In this process, no competitive bidding with another grain buying firm will be necessary. Without an assessment of the workings of world grain selling practices, DOJ's assumption that competitive bidding will maintain a competitive price for American farm products is unfounded.[9] And even if evidence of competition for export markets can be found, that does not necessarily mean that there is competition for the grain sold by American farmers. Firms can choose to collude in upstream markets and compete in downstream markets.

(6) DOJ failed to consider the economic disorganization of farmers which can be exploited by powerful buyers:

The DOJ also fails to consider the economic organization of farmers who sell to the large grain buyers. Courts have often noted that a key consideration when determining the potential for horizontal collusion is the relative organization of firms in the adjacent sectors. Judicial recognition has come in the form of a defense to challenged mergers.[10] Courts have entertained the argument that a larger, more powerful firm resulting from a merger may be acceptable if the firms it sells to also possess market power.[11] In U.S. v. Country Lake Foods, Inc., a case involving the merger of two firms in the fluid milk processing industry, a court recognized the ability of large food corporations who bought milk to check the power of milk processors.[12] The court noted the ''extremely concentrated'' nature of the food processing industry in the relevant market, where the top-three concentration ratio was over 90 percent.[13] The size of the food firms and the volume of their purchases allowed them to monitor milk prices, making them ''very sophisticated buyers.''[14] The court noted their ability to switch to other milk processors and to enter the processing market themselves.[15] The market entry of the large food processors would be aided by their capital resources, which would allow them to purchase an existing plant, and by their existing customer base.[16] The court found the power-buyer defense the ''most persuasive argument'' advanced by the defendants.[17]

Commentators have elaborated on the potential power of certain buyers. For example, buyers are particularly adept at checking the power of concentrated sellers when the price of the item in question is widely known.[18] In Country Lake Foods, the milk buyers could estimate the cost of processed milk based on the price paid for raw milk (since prices are publicly reported) and switch to a different seller if prices were deemed to be oligopolistically-priced.[19] In addition to switching to a new seller, buyers could induce the market entry of additional sellers by extending long-term contracts or providing the financing for the start-up of new sellers.[20] Large buyers could support the merger of two smaller sellers who, when their assets are combined, could more effectively compete against larger sellers in the market.[21] Large buyers could also enter or threaten to enter the upstream market themselves.[22]

Implicit in the recognition of the power-buyer defense is the assumption that powerful firms in a market can exploit small and disorganized firms in a vertically adjacent market. In other words, the power-buyer argument provides a rationale for halting the growth of powerful agribusiness processors at the expense of the thousands of farmers who sell to them. In U.S. v. United Tote, Inc., the court rejected the power-buyer defense because it recognized the relative disorganization of the buyers of the totalisator.[23] Because so many buyers were present in the market and the buyers possessed different levels of sophistication, they could not constitute a legitimate check on the power of the sellers.[24] In the recent case FTC v. Cardinal Health, Inc., the DC Court of Appeals considered the potential power of firms who bought drugs from the four largest wholesale distributors of drugs in the nation.[25] While the court noted the power of certain buyers in the market, it also considered the numerous independent pharmacies that lacked the power to effectively bargain with the large wholesalers.[26] The existence of a large number of buyers and the presence of many small independents created a ''fragmented'' buying sector unable to counter the power of the wholesalers.[27] The buyer-power defense creates a rational for scrutinizing the power of buyers relative to sellers. Thousands of farmers, for example, are hard-pressed to muster the market power necessary to check the powerful food companies who buy their products. Farmer marketing is characteristically disorganized and ''fragmented,'' similar to the descriptions of the totalisator and wholesale drug buyers described in United Tote and Cardinal Health.

An example of buyer power in agricultural markets was recently exposed in South Dakota. During the summer of 1999, a federal court in South Dakota ruled on the constitutionality of a South Dakota livestock

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[7] *U.S.* v. *Penn-Olin Chemical Co.,* 378 U.S. 158, 173–4 (1964).

[8] *U.S.* v. *El Paso Natural Gas Co.,* 376 U.S. 651, 660 (1964). See generally U.S. v. Falstaff Brewing Corp., 410 U.S. 526 (1973) (preventing Falstaff's acquisition of a New England brewery because it would eliminate Falstaff's de novo entry into the New England market); Mark D. Whitener, Potential Competition Theory—Forgotten But Not Gone, 5 Antitrust 17 (1991).

[9] For examples of grain company manipulations of world markets, see DAN MORGAN, THE MERCHANTS OF GRAIN (1979).

[10] Mary Lou Steptoe, The New Merger Guidelines: Have They Changed the Rules of the Game? 61 Antitrust L.J. 493, 493–4 (1993) (explaining that ''[a]lthough the power-buyer defense may appear to be a judicial creation that has only emerged within the last two years, it actually reflects an underlying trend in merger law, present since General Dynamics [1974], toward a more searching examination of the economic conditions that affect a seller's ability to exercise market power'').

[11] U.S. v. Baker Hughes, Inc., 908 F.2d 981, 984 (D.C. Cir. 1990) (now-Justice Thomas endorsing the consideration of a ''variety of factors'' in merger cases, including buyer power, and rejecting the ''fixation'' on singular factors such as market entry); F.T.C. v. Elders Grain, Inc., 868 F.2d 901, 905 (7th Cir. 1989) (Judge Posner recognizing that the industrial dry corn industry was unlikely to be cartelized given the nature of their buyers, ''a handful of large and sophisticated manufacturers of food products'').

[12] 754 F. Supp. 669 (D. Minn. 1990).

[13] Id., at 674.

[14] Id.

[15] Id.

[16] Id., at 680.

[17] Id., at 679.

[18] Steptoe, at 496.

[19] Steptoe, at 496.

[20] Steptoe, at 501.

[21] Safeway and Kroger, major buyers of ready-to-eat cereals, supported the merger of Kraft, which owns Post, and the cereal division of Nabisco because ''it makes Post a stronger competitor to Kellogg and General Mills,'' which sell 60 percent of ready-to-eat cereals. State v. Kraft General Foods, 926 F. Supp. 321, 325, 351 (S.D.N.Y. 1995).

[22] Steptoe, at 499–500.

[23] 768 F. Supp. 1064 (D. Del. 1991). The totalisator system manages betting at horse tracks. Id., at 1065.

[24] Tote, at 1085 (explaining that ''the totalisator market does not consist of a few, very large consumers. In stark contrast, the totalisator market consists of over two hundred fifty-five pari-mutuel [the most common form of wagering on horses] facilities, only thirty-nine of which have average daily handles in excess of 1 million dollars. Even if the Court were to accept United Tote's argument that the owners of these large, sophisticated facilities would be able to protect themselves from any anti-competitive price increase, this would still leave at least one hundred nine facilities unprotected in the small market segment along'').

[25] 12 F. Supp. 2d 34 (D.C. Cir. 1998).

[26] Cardinal Health, at 60 (noting that ''[i]ncreasingly, the 27,000 independent pharmacies in the United States today are joining buying cooperatives which, in turn, are consolidating to try to develop greater buyer power,'' but concluding that ''independent pharmacies have little leverage, as evidenced by the considerably higher upcharges they have to pay in comparison to the retail chains and institutional GPOs'').

[27] Cardinal Health, at 61 (holding that the ''existence of the independent pharmacies and the smaller hospitals makes the wholesale market considerably fragmented and remarkably similar to the market described in United Tote'').

price reporting law, passed during the 1999 legislative session in response to concerns about price manipulations by large packers.[28] While not an antitrust ruling, the court did note the large amount of buying power possessed by packers. The court explained the absence of bargaining power on the part of farmers, who ''are unable to set their prices but must rely on what buyers will pay,'' and concluded that ''[p]ackers have the market power in each livestock market to influence or determine prices paid to producers of livestock.'' [29] In the context of South Dakota farmers, the court noted the existence of an ''oligopsony'' among the state's three packers.[30]

(7) DOJ failed to consider information disparities in agricultural markets:

The DOJ also failed to consider informational disparities between farmers and large grain buyers. In Eastman Kodak Co. v. Image Technical Services the Supreme Court expanded the notion of market power, an element critical to most antitrust violations, to include information.[31] The Kodak decision recognizes a fundamental economic point raised in the economics literature in the 1960s, when information studies became prominent.[32] As George Stigler pointed out, market sellers do not simply accept the offer of the highest bidder.[33] Finding, or ''searching'' for, the highest bidder is a costly process, involving significant transaction costs.[34] Time is perhaps the largest expense,[35] especially for sellers of perishable agricultural products. When the prices paid for a commodity vary widely, indicating that some sellers did not find the highest bidders in the market, information problems are in evidence.[36] That some sellers did not search for higher prices may mean that they concluded the cost of the search would outstrip any potential returns from higher prices.[37] One method of reducing the problem of poor information and the resulting ''price dispersion'' is the centralization of knowledge in one identifiable location,[38] a solution similar to the recent calls for the mandatory reporting of prices paid by meatpackers.[39]

Agricultural markets are defined by stark information disparities. One study of Iowa hog farmers, for example, indicates that price searching is very limited [40] and that 85 percent of a farmer's hogs are sold to the same packer, indicating a very limited amount of price searching.[41] Such a result is similar to DOJ findings about the grain selling pattern of farmers, who ''generally sell their grain within a limited geographic area surrounding their farms.'' [42] Commentators have noted how ''firms can exploit in numerous ways the bargaining power that the lack of comparison shoppers confers on them.'' [43] The case for heightened scrutiny for bargaining arrangements involving farmers is provided for the Kodak analysis. as one commentator explained, ''Kodak suggests that market power may be found wherever ignorant buyers can be exploited through individualized bargaining,'' a conclusion which could also apply to disorganized sellers.[44] The power of possessing information in grain trading was recently conceded by Cargill's head of public affairs, ironically enough, when launching a new public relations campaign: '' If you look at our oldest business, which is grain trading, whoever has been in that business has been reticent to talk about the details' because a close hold on trading information could be critical to profits.'' [45] The importance of information was also noted in the recent price reporting decision in South Dakota, in which a federal court acknowledged that ''only packers have complete knowledge of livestock purchases and prices'' and that ''[o]nly a relatively small portion of livestock purchasing and pricing information is available to the public, including producers.'' [46]

(8) DOJ failed to explain the benefits of the merger:

Given the DOJ's concerns about the anticompetitive consequences of the merger, it is odd that no effort is made to justify its approval of the merger. The fears of anticompetitive behavior set forth in the complaint are not counter-balanced with a recognition of post-merger efficiencies, for example. With no apparent benefit to the merger and significant concerns expressed by many parties about its approval, the natural reaction would be to halt he merger. This response is further justified by the obvious difficulties that accompany the reversal of market concentration once it has become an economic fact.

(9) DOJ failed to consider a range of statutes that Congress intended courts to consider when making decisions about agricultural markets:

Perhaps the most glaring defect in the DOJ's analysis is its failure to consider all of the relevant statutes. Robert Pitofsky, Chairman of the Federal Trade Commission, has explained the importance of construing the antitrust laws comprehensively.[47] Pitofsky invokes the Supreme Court case *United States* v. *Hutcheson,*[48] which specifically interpreted the Sherman, Clayton, and Norris-LaGuardia Acts as ''interlacing statutes.'' [49] The existence of agricultural statutes in pari materia, which ''relate to the same thing'' as the antitrust statutes, requires that both be considered as ''one law'' in judicial decision-making.[50] Failing to consider agricultural statutes eliminates critical factors to be considered in antitrust decisions and undermines the designs of legislator. [51] As a broad principle, weighing an array of factors, including closely related statutes, is recognized as an important component of balanced legislative interpretation.[52] If courts consider the wider statutory regime and the particular problem it addressed, judicial decisions can more properly reflect past Congressional concerns about economic concentration and its negative impact on the bargaining power of farmers.[53]

The DOJ, for example, failed to consider the Packers and Stockyards Act (''P&SA'') of

[28] American Meat Institute and John Morrell & Company v. Mark W. Barnett, Findings of Fact and Conclusions of Law, Civ 99–3017, U.S. Dis. Court, South Dakota, Filed July 26, 1999 (upholding the statute's price reporting provision; holding the statute's prohibition on discriminatory pricing to be a violation of the commerce clause).

[29] Id. at 5.

[30] Id.

[31] 504 U.S. 451 (1992); Mark R. Patterson, Product Definition, Product Information, and Market Power: Kodak in Perspective, 73 N.C.L. Rev. 185, 187 (1994) (arguing that Kodak ''incorporated into antitrust law a body of economic teachings on product information that the Court had previously neglected'').

[32] GEORGE STIGLER, THE ORGANIZATION OF INDUSTRY 171 (1968).

[33] Id. at 171.

[34] Id.

[35] Id. at 175.

[36] Id. at 172.

[37] Id. at 175.

[38] Id. at 172, 176.

[39] S. 19, 106th Cong., 1st Sess., § 6 (requiring meatpackers to report prices paid for livestock); Steve Marbery, Debate Over Price Discovery Enters Critical Round, Feedstuffs, June 1, 1998.

[40] Market Access, 1995 Survey Results (Iowa Pork Producers Association, In Cooperation with Iowa State University), at 3 (''Eighty-seven percent of the producers reported pricing their hogs the day of, or the day before, delivery'').

[41] Id., at 4; Merle D. Faminow, Monica de Matos, R.J. Richmond, Errors in Slaughter Steer and Heifer Prices, 12 Agribusiness, 79, 79 (1996) (noting that the ''exploitation of informational asymmetries can be one form of market power whereby agricultural processing industries can exploit farmers who sell to them'').

[42] Complaint, at 4.

[43] Alan Schwartz and Louis L. Wilde, Intervening in Markets on the Basis of Imperfect Information: A Legal and Economic Analysis, 127 Cornell L. Rev. 630, 667 (1979).

[44] Thomas C. Arthur, The Costly Quest for Perfect Competition: Kodak and Nonstructural Market Power, 69 N.Y.U.L. Rev. 1, 15 (1994).

[45] Jill J. Barshay, Cargill Steps Into the Light With Image Campaign, Star Tribune (Minneapolis, Minn.), March 5, 1999.

[46] AMI v. Barnett, at 5–6.

[47] Robert Pitofsky, The Political Content of Antitrust, 127 U. Pa. L. Rev. 1051, n.31 (1979).

[48] 312 U.S. 219 (1941).

[49] Id., at 232; See also, Fairdale Farms, Inc. v. Yankee Milk, Inc., 635 F.2d 1037, 1042–32 (2nd Cir. 1980) (construing the Capper-Volstead Act in light of subsequent agricultural statutes).

[50] U.S. v. Freeman, 44 U.S. 556, 564 (1845) (''The correct rule of interpretation is, that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them, and it is an established rule of law, that all acts in pari materia are to be taken together, as if they were one law''); 73 Am. Jur. 2d Statutes § 187 (1974) (Current Through April 1998 Cumulative Supplement) (explaining that ''acts in pari materia, and all parts thereof, should be construed together and compared with each other. Because the object of the rule is to ascertain and carry into effect the legislative intent, it proceeds upon the supposition that the several statutes were governed by one spirit and policy, and were intended to be consistent and harmonious in their several parts and provisions. Under this rule, each statute or section is construed in the light of, with reference to, or in connection with, other statutes or sections'').

[51] U.S. v. Ferman, at 564 (explaining that ''[t]he error'' in the interpretation of a statute ''arose from that act having been considered by itself, without any reference to other statutes relating to [similar concerns]'').

[52] William N. Eskridge, Jr. and Philip P. Frickey, Statutory Interpretation as Practical Reasoning, 42 Stanford L. Rev. 321, 356 (1990).

[53] Id., at 358 (also noting the importance of the purposive inquiry; ''What problem was trying to solve, and what general goals did it set forth in trying to solve it?'').

1921.[54] The purposes and provisions of the statute require consideration when enforcing the Sherman, Clayton, and Federal Trade Commission Acts. P&SA passed after these broader statutes became law and was specifically directed toward a problem that seemed to persist despite the existence of previous legislation. The Congressional intent to promote the combined consideration and construction of the antitrust statutes is evidenced by the shared enforcement provisions of the P&SA.[55]

Some courts have specifically held that the statute is designed to go beyond the broad language of the Sherman, Clayton, and Federal Trade Commission Acts, thereby recognizing the importance of construing the statutes together.[56] While refusing to purchase a farmer's livestock might be acceptable under the Sherman or Federal Trade Commission Acts, for example, it would not be acceptable under the broad protective purposes of the P&SA.[57] In making such decisions, courts have recognized the problem of buyer power that farmers face [58] and which Congress attempted to address in the P&SA.[59] Furthermore, given the remedial nature of the statute, it should be interpreted liberally to carry out its broad mandate and purposes.[60] When combined with the already broad language of the statute, enforcement agencies are given wide regulatory powers over the meatpacking industry,[61] especially as it relates to injuries inflicted upon farmers.[62] One contemporary commentator described the legislation as ''extending farther than any previous law in the regulation of private business.'' [63] Borrowing heavily from the language of other antitrust laws, again confirming the interconnectedness of the antitrust legal regime, the legislation prohibits ''any unfair'' [64] practices or ''any undue or unreasonable preference or advantage'' to certain sellers. [65] The language of the PP&SA makes clear that particularly close scrutiny should be given to the marketing problems of farmers.

The DOJ also failed to consider the Capper-Volstead Act.[66] Among farmers in the late 19th century, a favored method of responding to the economic concentration of buyers was the marketing cooperative. Formal government efforts to aid farmer cooperatives came with the passage of the Clayton Act in 1914.[67] In order to eliminate legal obstacles that might slow the growth of market power among farmers through cooperatives, the legislation specifically exempted non-stock agricultural cooperatives from the antitrust laws.[68] The inclusion of the farmer cooperative provision within an antitrust statute offers further evidence of the importance Congress placed on considering the economic disorganization of farmers when applying the antitrust laws. Doubts about the effectiveness of the Clayton Act exemption triggered legislative efforts to draft a stronger statute.[69] The result was the Capper-Volstead Act of 1922, which broadened the exemption from the antitrust laws beyond non-stock cooperatives.[70]

With the passage of Capper-Volstead, Congress demonstrated its intention to treat farmer cooperatives differently from the typical corporate form and to give farmers the opportunity to build their bargaining power relative to corporate buyers.[71] By exempting farmer cooperatives from the antitrust laws Congress sought to help ''farmers to compete with large corporations.'' [72] According to some commentators, the legislation was specifically designed to ''counterveil the monopsony power then held by the corporate purchasers.'' [73] The Supreme Court agreed that ''individual farmers should be given, through agricultural cooperatives acting as entities, the same unified competitive advantage—and responsibility—available to businessmen acting through corporations as entities.'' [74] Without fear of antitrust prosecution, farmers were to unify into farmer cooperatives that could employ their bargaining power to negotiate with large food manufacturers for better prices for their products.[75]

The jurisprudence interpreting the Capper-Volstead Act recognizes farmer disorganization and the power of large-scale buyers. The court in Kinnet Dairies, Inc. v. Dairymen, Inc., for example, noted that ''farmers needed congressional help'' since they ''had always been pricetakers, standing relatively helpless before those who would purchase their products.'' [76] In order to overcome the monopoly problem common to agricultural markets, Congress ''deliberately set about to enable farmers to organize and band together in order to acquire and exercise marketing power.'' [77] If farmers can muster enough bargaining power a ''bilateral monopoly'' between seller and buyer will result, conferring on farmers a fair price for their products.[78] The mirror image of

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[54] 7 U.S.C. § 181 et seq.

[55] The PS&A even allowed for divided enforcement between the Secretary of Agriculture and the FTC. The FTC was to enforce the ''retail sales'' provision of the statute but the Secretary could assume responsibility if the FTC was not already proceeding with a similar investigation. § 406(d). Per se illegality standards in the Clayton and FTC Acts carry over to P&SA. Re ITT Continental Baking Co. (1985) 44 Ag Dec 748.

[56] Wilson & Co. v. Benson, 286 F.2d 891 (7th Cir. 1961).

[57] Swift & Co. v. U.S., 393 F.2d 247, 255 (7th Cir. 1968).

[58] Id., at 250–52 (finding that buyers of lambs agreed not to pay over a certain price and that buyers agreed not to bid against one another for lambs; the firm which bought the lambs then sold them to another buyer which had agreed not to bid on the lambs).

[59] Id., at 254 (''The lack competition between buyers, with the attendant possible depression of producers' prices, was one of the evils at which the Packers and Stockyards Act was directed'') (citing Meat Packer Legislation hearings before the House Committee on Agriculture, 66th Cong., 2d Sess., pp. 22, 229, 250, 303, 1047, 2284 (1920)).

[60] Bruhn's Freezer Meats of Chicago, Inc. v. U.S. Department of Agriculture, 438 F.2d 1332, 1336 (8th Cir. 1971) (citations omitted); Glover Livestock Commission Company, Inc. v. Hardin, 454 F.2d 109, 111 (8th Cir. 1972) (describing the legislation as remedial and requiring liberal construction to carry out its purpose of (''prevent[ing] economic harm to producers and consumers at the expense of middlemen'') (citing Bruhn's).

[61] Id., at 1339 (''The Act was framed in language designed to permit the fullest controls of packers and stockyards which the Constitution permits, and its coverage was to encompass the complete chain of commerce and give the Secretary of Agriculture complete regulatory power over packers and all activities connected therewith'').

[62] Stafford v. Wallace, 258 U.S. 495, 514–15 (1922) (holding that the ''chief evil feared is the monopoly of the packers, enabling them unduly and arbitrarily to lower prices to the shipper who sells'').

[63] Current Legislation, The Packing Industry and the Packing Act, 22 Colum L. Rev. 68, 70 (1922) (quoting Senate Agricultural Comm., Rep. No. 77, 67th Cong., 1st Sess. 2 (1921)).

[64] 7 U.S.C. § 202(a) (italics added).

[65] Id. at § 202(b) (italics added).

[66] 7 U.S.C. §§ 291–2.

[67] 15 U.S.C. §§ 12–27 (1983).

[68] Id., at § 17.

[69] Wendy Moser, Selective Issues Facing Cooperatives: Can the Customer continue to be the Company? 31 S.D.L.Rev. 394, 395 (explaining that Capper-Volstead was passed to ''clarify the Clayton Act exemption provided to farmers'').

[70] 7 U.S.C. §§ 291–92.

[71] Fairdale Farms, 635 F.2d at 1043 (noting that ''agricultural cooperatives were 'a favorite child of Congressional policy' '') (quoting treatise); David Million, The Sherman Act and the Balance of Power, 61 S. Cal. L. Rev. 1219, 1281 (1988) (''The exemption of labor and agricultural combinations from the Sherman Act's proscriptions further demonstrates that a deep concern about social balance lay beneath statements of solicitude for those harmed by the trusts. Several senators advocated exemption on the ground that such combinations were necessary to counterbalance the economic power of massed capital.''); Michael D. Love, Antitrust Law—Fairdale Farms, Inc. v. Yankee Milk, Inc.:—The Right of Agricultural Cooperatives to Possess Monopoly Power, 7 J.Corp.L. 339, 341 (1982) (explaining Congressional hopes of helping ''cooperatives to finance business operations of sufficient magnitude to compete with corporations''); Kathryn J. Sedo, The Application of the Securities Law to Cooperatives: A Call for Equal Treatment for Non-agricultural Cooperatives, 46 Drake L. Rev. 259, 272 (1997) (noting the farmer cooperative exemption from the securities laws, indicating the Congressional view that cooperatives were favored organizations).

[72] Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co., 284 F.2d 1, 8 (9th Cir. 1960).

[73] David L. Baumer, Robert T. Masson, and Robin Abrahamson Masson, Curdling the Competition: An Economic and Legal Analysis of the Antitrust Exemptions for Agriculture, 31 Vill. L. Rev., 183, 185 (1986) (''Congressional passage of the agricultural antitrust exemption encouraged the formation of agricultural cooperatives intended to counterveil the monopsony power then held by the corporate purchasers'').

[74] Maryland & Va. Milk Producers Ass'n v. United States, 362 U.S. 458, 466 (1960).

[75] Note, Trust Busting Down on the Farm: Narrowing the Scope of Antitrust Exemptions for Agricultural Cooperatives, 61 VA L. Rev. 341, 364 (1975) (''Capper-Volstead's authorization of collective processing and marketing was an attempt to counter the bargaining power of oligopsonist buyers, but the bargaining power gap is as wide today as it was fifty years ago'').

[76] 512 F.Supp. 608, 630 (M.D. GA. 1981); Northern Cal. Supermarkets, Inc. v. Central Cal. Lettuce Producers Cooperative., 413 F.Supp. 984, 988 (N.D. Cal. 1976) (noting that ''Congress perceived farmers as being at the mercy of sharp dealers in the sale of their produce and, therefore, made it possible for them to form cooperatives to help themselves'').

[77] Kinnet Dairies, 512 F.Supp. at 630. The court specifically mentions the promotion of ''countervailing power'' as a function of farmer cooperatives. Id., at 614.

[78] National Broiler Marketing Assn. v. U.S., 436 U.S. 816, 842 (1978) (J. White dissenting) (''The

promoting farmer bargaining power is close attention to economic activities that might increase the concentration among buyers and contribute to their collusive potential. Accordingly, the wider policy rationale of Capper-Volstead requires that DOJ and other enforcement officials apply strict scrutiny to mergers or other activities that enhances the power of buyers and worsens the bargaining position of farmers.

Finally, the DOJ failed to consider Congressional concerns about maintaining a balanced bargaining arrangement between farmers and processors as manifest in the Agricultural Fair Practices Act (AFPA) of 1967.[79] The statute was designed to prevent corporations from interfering in the formation of collective marketing organizations among farmers.[80] Congressional action stemmed from episodes in which food processing corporations discriminated against cooperative bargaining associations by refusing to buy their products.[81] Courts have interpreted the ''overriding purpose'' of the resulting legislation to be the protection of farmers' rights to cooperatively organize.[82] Throughout the 1970s, Congress considered additional legislation to improve the bargaining power of farmers relative to that of the corporate food processing sector.[83] The AFPA's recognition of the disorganized nature of farmer marketing[84] and the potential for abusive practices on the part of agricultural processors adds further evidence of heightened Congressional concern with market power among buyers.

(10) DOJ failed to consider that the consent decree risks leaving farmers without an effective outlet for legal redress:

The resulting consent decree will be reviewed by a district court in the District of Columbia (''D.C.''), where it is less likely that a federal judge will be familiar with agricultural concerns. When seeking leverage in the negotiations over the consent decree, the DOJ had a plane waiting to take a lawyer to Fargo to file suit, indicating their understanding that a farm-state venue would be more advantageous in litigation than Washington, D.C. The D.C. Court of Appeals has also severely restricted the ability of district courts to determine whether a consent decree is ''in the public interest,'' making it more likely that the concerns of interested parties will not be fully considered in a court of law.[85] One commentator has noted that the DC Court of Appeals ruling ''threatens to eliminate any effective role for the courts in reviewing antitrust consent decrees.'' [86] The DC Court of Appeals conclusion that a consent decree can be rejected only if it makes a ''mockery'' of judicial power is ''almost no standard at all and places in jeopardy the Tunney Act [Antitrust Procedures and Penalties Act] requirement that the district court independently review the decree to ensure that it is in the public interest.'' [87]

If a federal court does not reject the consent decree, the next logical step is for the attorneys general of farm states to challenge the merger in federal court. Unfortunately, such a move is extremely difficult given the limited enforcement budgets and antitrust expertise of attorney general offices in Midwestern farm states, leaving many of the states most affected by the merger hard-pressed to marshal the resources necessary to challenge the merger, especially given the wealth of Cargill, the largest private company in the country.[88] Larger states such as New York and California, which have larger antitrust divisions, are not likely to challenge the merger given their distance from the concerns of the Midwestern farmer. Such conditions make it possible that those who have advanced legitimate objections to the merger will not have their day in court. As a result, one of the main reasons for the passage of the Tunney Act—the fear of excluding interested third parties from the merger review process—will be ignored.

Given the importance of this merger and the constraints on state action if the consent decree is approved, I respectfully request that the comment period for this merger be extended another sixty days to December 12th. Several parties have expressed interest in commenting on the merger and will not be able to do so by October 12th. In the interest of a fair hearing on this critical matter, I urge DOJ to support a lengthening of the comment period, as allowed under the Tunney Act.[89]

If the DOJ and the court do not see fit to extend the comment period, OCM urges the court to reject the proposed consent decree for failing to consider the factors set forth herein.

Sincerely,

Jon Lauck, Ph.D.,

Special Project Director, Organization for Competitive Markets.

Attachments to the comment filed by the Organization for Competitive Markets are available for inspection in room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, N.W., Washington, DC 20530 (telephone: 202–514–2481) and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001. Copies of these materials may be obtained upon request and payment of a copying fee.

Pemiscot County Farm Bureau

P.O. Box 80, Caruthersville, MO 63830, (573) 333–4196, Fax: (573) 333–4537

August 2, 1999.

Judge Gladys Kessler,

US District Court, District of Columbia, 333 Constitution Ave. NW, Washington, DC 20001.

Dear Judge Gladys Kessler: We are writing to request that you protect competition in this part of Missouri.

We are concerned there may have been some misrepresentation in the civil action

specific goal of permitting agricultural organizations was to combat, and even to supplant, purchasers' organizations facing the farmer. Economics teach that the result in such circumstances is 'bilateral monopoly' with a potentially beneficial impact on the eventual consumer and a sharing of cartel profits between the organized suppliers and the organized buyers''). The court also specifically mentions that chicken farmers exist in an ''oligopsonistic'' market. Id., at 844 (quoting Brown, U.S. v. Broiler Marketing Association: Will the Chicken Lickin' Stand?, 56 N.C.L.Rev. 29, 44 (1978)).

[79] 7 U.S.C. §§ 2301–2306; Donald A. Frederick, Agricultural Bargaining Law: Policy in Flux, 43 Ark. L. Rev. 679, 689 (noting that the legislation was ''viewed as an important sanction of agricultural bargaining'' and was a ''congressional reaffirmation of the value of cooperative bargaining and marketing by agricultural producers'').

[80] 7 U.S.C. § 2303 (forbidding corporations from coercing, discriminating, or intimidating members of farmer bargaining groups).

[81] Randall Torgerson, PRODUCER POWER AT THE BARGAINING TABLE: A CASE STUDY OF THE LEGISLATIVE LIFE OF S. 109 3–17 (1970).

[82] Butz v. Lawson Milk Co., Division of Consolidated Foods Corp., 386 F.Supp. 227, 235 (N.D. OH. 1974) (''the overriding purpose of Congress in enacting the Agricultural and Fair Practices Act of 1967 was to protect the individual producer of milk in his right to band together with other producers or, in effect, to unionize'').

[83] National Broiler Marketing Assn., 436 U.S. at 837 (1978) (Brennan, J., concurring) (noting the ''persuasive evidence that Congress' concern for protecting contract growers vis-a-vis processors and handlers has not abated''); Oliver and Snyder, Antitrust, Bargaining, and Cooperative: ABC's of the National Agricultural Marketing and Bargaining Act of 1971, 9 Harvard J. Legislation 498 (1972); Frederick supra, Agricultural Bargaining Law, at 691–693.

[84] 7 U.S.C. § 2301.

[85] *United States* v. *Microsoft Corp.,* 56 F.3d 1448 (D.C. Cir. 1995).

[86] Lloyd C. Anderson, *United States* v. *Microsoft, Antitrust Consent Decrees,* and the Need for a Proper Scope of Judicial Review, Antitrust L.J. 1, 3 (1996).

[87] *Id. at 4.* See also Deborah A. Garza, The Microsoft Consent Decree: The Court of Appeals Sets Strict Limits on Tunney Act Review, 10 Antitrust 21 (Fall 1995) (arguing that the Tunney Act ''might reasonably be read to authorize a more substantial role for the district court'').

[88] The office of Attorney General in Minnesota currently has 2 and one-half attorneys who handle antitrust matters. The offices in North and South Dakota do not have attorneys who work full-time on antitrust matters. See generally Joseph F. Brodley, Antitrust Standing in Private Merger Cases: Reconciling Private Incentives and Public Enforcement Goals, Mich. L. Rev. 2, 38–41 (1995) (explaining the limits on state action).

State merger enforcement is confined to a relatively few merger-enforcing states and is dependent on the views of changing state attorneys general and state budgetary support in a time of increasing financial stringency . . . Resources and personnel limit state merger enforcement. Merger cases are the most resource-intensive antitrust litigation. Within a matter of weeks, sometimes even days, the plaintiff must marshall a sophisticated antitrust case involving proof of complex economic facts, including market definition, market power, and oligopolistic conduct—an awesome task, even for a large team of lawyers and economists representing a billion-dollar corporation. Yet most states have only three to five antitrust lawyers, others no more than one or two, and some states none at all. In addition, almost none of the states has a staff economist, and the tight time limits of merger litigation tend to hamper the effective multi-state coordination that occurs in other types of state antitrust litigation. Financial pressures also inhibit state merger capability and growing budgetary limitations on state finances may intensify these pressures.

[89] 15 U.S.C. & 16(d).

case #991875 that may lead you to a different conclusion.

Cargill was initially asked to divest itself of the Continental Grain Cottonwood Point elevator. We believe this was done through an error or misunderstanding about the location of this elevator. This elevator sits on the Mississippi River at a place called Cottonwood Point. Although it is 10 miles south of Caruthersville, MO it carries that address. This is unfortunate because we believe it made the anti-trust people feel it was too close to an elevator Cargill owns at New Madrid, MO. These elevators are about 47 miles apart and do not, to my knowledge, compete for business.

So we are asking that you permit the sale of this elevator to Cargill to go ahead. We feel strongly that this will give local farmers the most competitive prices for our grain.

Judge, we are asking that whatever happens, please don't let Bunge, Inc., acquire this elevator because they own the next 3 elevators above it and the next 3 elevators below it (a distance of 84 miles).

I personally have farmed 13 miles inland from Cottonwood Point for just over 30 years. All my grain has been sold almost equally to Bunge and Continental during these years. If the grain producers in this area do not have 2 or more strong competitors within 25 or less miles, then our little world is going to get a lot more difficult real quick.

Thank for your consideration in this matter.

Sincerely,

David Haggard,

Pemiscot County Farm Bureau Board President.

October 11, 1999.

Rural Life Office

511 Bear Creek Drive, Dorchester, Iowa 52140–7505; 1–800–772–2758

Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 321 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Dear Mr. Fones: We are very concerned about the Department of Justice's ''Final Ruling'' on the case of US of America v. Cargill, Inc and Continental Grain Co. We ask that you please forward our comments and the enclosed letter to Judge Kessler.

We work with farmers and rural communities all over the 30 counties of north east Iowa for the Rural Life Office of the Archdiocese of Dubuque.

We do not find the Department of Justice's findings for the merger of Cargill-Continental to be in the best interests of the people we work with in the 30 counties of Northeast Iowa. Producers will be even more limited in their markets than they currently are, and they face the probability that Cargill/Continental will exert strength in the organic and specialty markets with the take-over of Continental's facilities. This has to be recognized as not being in the public interest.

The laws of this country are meant to protect the advancement and good of common people, not corporations. The action we request would help government to move further in this direction.

Respectfully,

Mary and Don Klauke.

Western Organization of Resource Councils

2401 Montana Avenue, #301, Billings, Montana 59101; (406) 252–9672, FAX (406) 252–1092

October 12, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

By FAX: 202/307–2784

Dear Mr. Fones: On behalf of the Western Organization of Resource Councils, I am writing to urge you to reopen your investigation into the proposed acquisition of Continental Grain by Cargill and extend the public comment period on the proposal. Mergers and acquisitions in the agribusiness industry are closing out the markets for family farmers and ranchers. The Department's approval of this merger with a few required divestitures is wholly inadequate to protect competition in the grain trade, which these two firms dominate along with ADM.

As Jon Lauck has explained in his letter for the Organization for Competitive Markets to you, the Department's analysis of this proposal (1) fails to consider the wider concentration in agricultural markets beyond grain buying; (2) fails to consider the continuing potential for anticompetitive behavior in the post-merger market; (3) fails to show that the divested remnants of Continental will be a competitive force absent a large network of elevators which buy grain; (4) fails to consider the nature of the grain selling market; (5) fails to consider the economic disorganization of farmers which can be exploited by powerful buyers; (6) fails to consider information disparities in agricultural markets; (7) fails to explain the benefits of the merger; (8) and fails to consider a range of statutes that Congress intended courts to consider when making decisions about agricultural markets.

We strongly urge your reconsideration of this action in an analysis which weighs these issues. The Department's strong action is needed here to preserve competition and free, competitive markets against encroachment by monopolistic corporations.

Sincerely,

Shane Kolb,

Chair, Agriculture Issue Team.

Exeten, NE 68351,

Oct. 6, 1999.

Mr. Roger W. Fones,

Antitrust Division—U.S. Dept. of Justice, Washington, D.C. 20530.

Dear Mr. Fones: The merger concerning Cargill & Continental Grain is a major concern to me as a farmer. This merger would unify the second and third largest grain traders in North America, which export 40% of the American agricultural commodities.

To demonstrate how confident these companies are of the merger, a lady sold her grain to her elevator this year which is owned by Continental (for years) and four days later she received her check in a Cargill envelope. This merger has not been approved.

In my area Cargill has an elevator on the Burlington-Northern rail line. They control the amount of rail cars available and the time. This influences the prices paid for our grain in the surrounding elevators and the York ethanol plant. All exist within less than 25 miles of our farm. We need market transparency and tougher anti-trust enforcement.

Keep competition open. Do not allow the merger.

Sincerely,

Cynthia Thomson,

State WIFE President.

Lincoln's Letter on Corporations

''We may congratulate ourselves that this cruel war is nearing its end. It has cost a vast amount of treasure and blood * * * It has indeed been a trying hour for the Republic; but I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country.

''As a result of the war, corporations have been enthroned and an era of corruption in high places follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth's aggregated in a few hands and the Republic is destroyed.

''I feel at this moment more anxiety for the safety of my country than ever before, even in the midst of war.''

This letter was written by Abraham Lincoln to William F. Elkins, Nov. 21, 1864.

Alvo, Nebraska

Sept. 28, 1999.

Mr. Roger W. Fones *Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh St. N.W. Suite 500, Washington, D.C. 20530.*

Dear Sir: As a member of a family who has resided and made its living on the same farm for five generations, I feel compelled to write to you concerning the merger of Cargill and Continental Grain.

That merger is a major concern to all American farmers because of the impact Cargill's monopoly of the grain trade will have on the farms and communities in our areas.

The main thrust in our operation is wheat, corn and soybean production and a cow/calf and cattle feeding program. That is our source of income.

I believe family farmers who are producing food for the world, below the cost of production, are at a disadvantage competing with conglomerates such as the top four firms.

I urge you to use your authority to pressure the U.S. Department of Justice to revisit its investigation of the Cargill/Continental sale.

Respectfully yours,

Pauline Johnson.

Alvo, NE 68304

Sept. 29, 1999.
Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division in U.S. Dept. of Justice, 325 Seventh Street, NW, Ste 500, Washington, D.C. 20530.

Dear Sir: Regarding merger of Continental and Cargill Grain Co.

Deep concerns of the shrinking but necessary family farmers.

Excessive mergers are forming monopolies. In the agriculture sector it is putting more stress on your food producers (grain & livestock).

Cargill may have already thought they have the merger sewed up the merger as grain sold to the Continental Grain Co. was paid for with a Cargill check?

I *urge* you to stop this mad rush of mergers with everything. Seven corporations will rule the world. It is fast becoming international.

Is this what our pioneer fore-fathers wanted?

Thank you for your time and *thought.*

Dyed in the wool American farm wife.

Senior Citizen,

Dorothy McKay.

Elmwood, NE 68349
Mr. Roger Fones,
U.S. Dept. of Justice, Antitrust Division, 325 Seventh St. N.W. Suite 500, Washington, D.C.

Dear Mr. Fones: I am a family farmer in eastern Nebraska. I am extremely concerned about the merger of Cargill and Continental grain companies. The merger of these two giant grain companies would lessen the competition in grains, locally, nationally and globally. I urge you to consider the impact this would have on us and act to stop the merger. This merger (proposed) needs immediate action by the antitrust division and the U.S. Justice Department. The antitrust laws are in place and need to be enforced!

Thank You.

Norma Hall.

Plentywood, MT
Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Dept. of Justice, 325 7th St. NW, Suite 500, Washington, D.C. 20530.

Dear Mr. Fones, Having served as Transportation officer for WIFE for many years, and seen just what 'mergers'/ 'takeovers'/ acquisitions, etc. do to rural America in the field of rail transportation, I write to ask that the U.S. Department of Justice re-open its investigation of the Cargill's acquisition of Continental Grain operations.

As farmers, we are already experiencing the loss of competition in rural America. Producers who own one company's machinery find that they may have to drive 100–150 miles to acquire some repairs for its. Or wait until it can be mailed to them from some central point thousands of miles away.

Those of us who have no alternative to shipping by rail have found not only that we now are 'served' by one carrier, but we have to drive greater distances with our own farm trucks to reach a terminal.

Formerly, Montana was the only state that was dominated by one rail carrier. Now we see that, because of mergers, other states, other industries, have lost the edge that competition in transportation gives them. Those who have watched the developments are not surprised that, no matter what reassurances are given by the company that is benefitting by the takeover, the dire predictions by those opposing the transaction have proven accurate.

So now we are again among those who are predicting that the Cargill acquisition of Continental's grain operations will be beneficial only to Cargill.

Competition is vital to not only our grain producers, but to the farmers of the world. The takeover of Continental's operations is going to dramatically affect not only those producers who are directly served by the Cargill/Continental terminals, but by all producers of grains in the U.S.

The Antitrust Division is our only hope, so we ask that you exercise your authority before the amount of power exerted by one company becomes too great, and producers lose one more battle to keep competition working for them.

Sincerely,

Mary W. Nielsen,
Montana Transportation, WIFE.

September 27, 1999.
Mr. Roger W. Fones
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, US Department of Justice, 325 Seventh St. SW Suite 500, Washington, DC 20530.

Re: Cargill & Continental Grain Company Merger

Dear Mr. Fones: It is my understanding that the final judgment concerning the above matter will be determined in the middle of October.

I want to urge you to consider this matter very carefully and urge your affiliates to rule against this merger. Cargill's purchase of Continental Grain would unify the second and third largest grain traders in Nebraska, making it possible for Cargill to control the export market much more than it does at the present time.

We do not need bigger companies with more control over our markets. We have a Cargill elevator within 15 miles of our farming operating. They have so many different plans for each agriculture producer that it is unbelievable. They have determined that our grain should be .5% dryer when brought into the elevator making more money for the elevator and less for the producer. It may not seem like a large amount but when you are paying the drying bill, it definitely adds up. They also have a plan if you buy everything from them—fertilizer, seed corn, chemicals, insecticide and deliver all your grain to them—they will do this for you and that for you. They definitely want control—both of the farmer and the market.

The farming industry is in very serious trouble with today's markets so low and our cost of production going up.

We hope that in reading this letter that you will investigate the merger more thoroughly and understand why this merger is being challenged in the agriculture sector. Since this is harvest in the Midwest, it would also be of some assistance if the deadline for comment would be extended another sixty days to December 12, 1999.

Yours in Ag,

Frances Heinrichs,
Women Involved in Farm Economics (WIFE).

Tab 4

Greta Anderson, Iowa City, IA
September 19, 1999.
Judge Gladys Kessler,
U.S. District Court, for the District of Columbia, 333 Constitution Ave. N.W., Washington, D.C. 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler:

Presently before you awaiting your approval is a ''Final Judgment'' filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

Legal precedent, according to the Department of Justice, requires that ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society. but whether the settlement is within the reaches of the public interest.''

In its July 8, 1999 ''Final Judgment'' I believe in fact that the Department of Justice has ''breached its duty to the public in consenting to the decree'' and that its Final Judgment is not ''within the reaches of the public interest.''

As the Department of Justice's own ''Complaint'' states, the Cargill purchase would ''substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices.''

Using the Department of Justice's own figures and criteria we see in its ''Complaint'' that even before this announced purchase the U.S. grain trade was already dominated, if not monopolized, by Cargill and nothing in the Department of Justice's ''Final Judgment'' addresses itself to that important issue.

Likewise, the Department of Justice must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors.

For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots, pork

packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and ''sophisticated'' firm, even more capable of strategic, cooperative, and anti-competitive behavior.

To me, it is tragic that the government does not put the rights of family farmers first, but rather participates in the idea that there are ''too many farmers.'' Drive through rural America: you will see that there are not too many farmers, but rather, too many suburbanites and strip malls. The accumulation of capital such as Cargills is not ''inevitable'', nor is this merger.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States I urge you to recommend that the Department of Justice withdraw its ''Final Judgment,'' study in far greater detail this ill-advised sale and carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Sincerely,

Greta Anderson.

Iowa City, IA
September 22, 1999.

Dear Sir: I am writing my concern over the merger of Cargill and Continental. Bigger is not better, the market for cash grain is already highly concentrated and yet another merger would spell doom for the independent farmer.

Sincerely,

Vivian Anderson.

Cresco, IN

Dear Chief Fones: I was born and raised on a farm, coming from a family of 13 children. Those were days of fair treatment, where farmers could make a living (however big the family). I believe the small average farmer meant something. These days we're used, to put it bluntly (as doormats). Is it just the big shots (the powers that be) that force us to do things their way, no matter who they step on? Don't us little guys count? I was taught that God made us all equal. Do you think the way the smaller people are being treated is equal and fair? I don't, and I'm sure God didn't have plans for the big corporations (such as Cargill) to be (in control); as they seem to be doing. Haven't we been pushed down, stepped on, and ground in the dirt enough? I think we count too. I beg you, Please don't let Cargill have any more control. Seems we've been damaged about as much as possible. We don't have a leg to stand on now; let alone if you let Cargill and other big corporations have any more control. We work very hard and can't squeeze a meager pauper's wage and living now. Why can't we have a little cream of the crop? Are the (people in control) entitled to all the cream and us little people can have the skim milk or whey that is left over?

I think you should keep in mind that God made us all equal; and you and I know the way things are now is way off balance.

Please don't let Cargill or any other of these big corporations have any more control and completely wipe *us* out

Thank you Kindly,

Kay M. Barnes.

September 23, 1999.

Dear Sir: This is in response to the invitation for comments regarding Final Judgment; the case of Cargill merging. This was written up in the Minnesota Farmers Union August publication and got me to thinking about how we little people are being squeezed and eventually choked by big business

As a midwest dairy farmer, reading articles only depresses one as there is a feeling of hopelessness implied by the ''powers that be''. They talk and talk, attend meeting after meeting and declare the poor farm situation must be addressed and so far in 1999 that's as far as it goes.

The CEO's of the major grain mergers can only see $$ for their own pockets and I suppose one can't judge harshly on that, but is it fair to the hard working farmer to not have a decent cut for his efforts. Every day in the business section someone's throat is cut by the money people. I am thoroughly opposed to more merging. Let's put a moratorium on mergers until someone figures out the agriculture and dairy dilemma and really moves in the right direction for all.

Sincerely,

Mary Beckrich.

Cologne, Minnesota
October 11, 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

FAX: 202/307–2784

Dear Mr. Fones: I am writing to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

Are you aware of what the creation of a large monopoly will do, not only to grain farmers in this country, but also to all consumers?

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S., farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give my request your serious consideration.

Sincerely,

Deari Borth.

October 11, 1999.
Meade, KS
Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Anit-Trust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

FAX: 202/307–2784

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Farmers are going broke in our state at an alarming rate. Across the U.S. farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give my request your serious consideration.

Sincerely,

Greg Borth.

Honorable Judge Gladys Kessler
U.S. District Court, District of Columbia, 333 Constitution Ave. N.W., Washington, DC 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: You have before you awaiting your approval a Final Judgment filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp, which is a privately held corporation.

Legal precedent, according to the Department of Justice, requires that the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is within the reaches of the public interest.

In its July 8, 1999 Final Judgment I believe in fact that the Department of Justice has

breached its duty to the public in consenting to the decree and that its Final Judgment is not within the reaches of the public interest.

Clearly, as the Department of justice's own complaint states the Cargill purchase would substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices.

Using the Department of Justice's own figures and criteria we see in its Complaint that even before this announced purchase the U.S. grain trade was already dominated, if not monopolized, by Cargill and nothing in the Department of Justice's Final Judgment addresses itself to that important issue.

Likewise, the Department of Justice must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors.

For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest), pork packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets allows Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

This vertical and horizontal domination by Cargill allows then to maintain dominant status in all of these markets. While small family farmers are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time because it can afford to subsidize poor economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and sophisticated firm, even more capable of strategic, cooperative, and anti-competitive behavior.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States I urge you to recommend that the Department of Justice withdraw its Final Judgment, study in far greater detail this ill-advised sale and carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Sincerely,

Marilyn Borchardt,

Daughter of a former farmer.

Meade, KS.

October 11, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

FAX: 202/307–2784

Dear Mr. Fones: I am writing to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

Are you aware of what the creation of a larger monopoly will do, not only to grain farmers in this country, but also to all consumers?

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S., farm income is down by 70% Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give my request your serious consideration.

Sincerely,

Isabelle Borth,

Tri-Von Enterprises,

107 S. Celina Street, Roanoke, IL 61561–1097,

September 25, 1999.

Energy & Agriculture Section, Antitrust Division, U.S. Dept. of Justice, 325 7th St. NW, Ste 550, Washington, D.C. 20530.

Attention: Roger W. Fones, Chief of Transportation

Dear Mr. Fones, We are concerned about the Cargill-Continental merger. We do not believe it is required to compete in the global economy and will be extremely detrimental to the agricultural community. It is our opinion that this market is already highly concentrated and we feel this will work to the destruction of the few remaining independent farmers left here in our precious prairie.

Although we are not farmers, we sell computers to many of our local farmers and know the sad situation this would put them in. Independent farmers are the backbone of this nation and we must not let corporate farming take over. Enough is enough!

Sincerely,

Loris von Brethorst.

Callicrate Feedyard

P.O. Box 748, St. Francis, KS 67756s

October 11, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Dear Mr. Fones, Mergers and concentration have gone too far. Justice not only needs to deny the Cargill-Continental Merger but also needs to reverse prior mergers and restore competition in agricultural markets.

Companies like Cargill, ConAgra, ADM, Farmland and IBP are destroying our food system and killing us. We are losing our towns and communities with their low fixed commodity prices.

The big money of companies like Cargill is dominating government policy and influencing the non-enforcement of antitrust laws for their benefit; what about the people? Stop using the lame excuse of ''economies of scale and efficiencies,'' they have no more basis today than when used as an excuse in Thomas Jefferson's day.

Sincerely,

Mike Callicrate.

New York Times,

October 11, 1999.

Essay By William Safire

Where is antitrust? I say No to the Cargill-Continental Merger!—G.M. Calnon, St. Francis, KS 67756.

Clinton's Consumer Rip-Off

Jacksonville, Fla.—''You want to buy this new cable service that's much faster than your old modem,'' my son the information architect told me. Not wanting to become the slowpoke pundit, I called my local cable company and ordered ExpressNet. A new black box cost $150 and the monthly fee was $25.

Two weeks later, a disembodied voice called to say that the superspeed Internet connecting service had merged with a Texas conglomerate and if I didn't agree to the doubling of the monthly rate, my service would end and I would be stuck with a useless $150 receiver.

I again called my local cable monopoly. Although I never reached a human being, its complaint software signaled that I could continue for six months at the original rate, after which it was double or nothing.

This minor outrage came to mind in watching the gee-whiz, ain't-these-big-numbers-fun accounts on television news of the latest combinations of corporate colossi.

Worldcom, which last year bought MCI, was now swallowing up Sprint for $115 billion.

This, analysts assure us, will allow the new supergiant to compete with AT&T, which already is plunking down $58 billion for Mediaone with the smiling approval of roundheeled Clintonites at the Federal Communications Commission.

Why are we going from four giants in telecommunications down to two? Because, the voice with the corporate-government smile tells us, that will help competition. Now each giant will be able to hedge its bets in cable, phone line and wireless, not knowing which form will win out. The merger-manic mantra: In conglomeration there is strength.

That's what they said a long generation ago when business empire-builders boosted their egos by boosting their stock to buy the earnings of unrelated companies. A good manager could manage anything, they said, achieving vast economies of scale. As stockholders discovered to their loss, that turned out to be baloney.

Ah, but now, say the biggest-is-best philosophers, we're merging within the field we know best. And if we don't combine quickly, the Europeans and Asians will,

stealing world business domination from us. The urgency of ''globalization,'' say today's mergermaniacs, destroys all notions of diverse competition, and only the huge, heavily capitalized multinational can survive.

That's why we see the Old Seven Sisters of oil working their way down toward two big sisters having fun with fungibility, and why our former Big Seven accounting firms are headed to a Big Two. Unchecked international combines can crush unions, water down professional ethics, circumvent national regulation and stick it to consumers.

Here are two startling, counterintuitive thoughts: The fewer companies there are to compete, the less competition there is. And as competition shrinks, prices go up and service declines for the consumer. (Say these reactionary words at the annual World Economic Forum in Davos, and listen to the global wheeler-dealers guffaw.)

Who is supposed to protect business and the consumer from the power of trusts? Republican Teddy Roosevelt believed it to be the Federal Government, but the antitrust division of Janet Reno's Justice Department is so transfixed by its cases against Microsoft and overseas vitamin companies that it has little time to enforce antitrust law in dozens of other combinations that restrain free trade.

Our other great protector of the public interest in diverse sources is supposed to be the F.C.C. When MCI merged with Worldcom last year, the chairman appointed by President Clinton, William Kennard, took no action but direly warned that the industry was ''just a merger away from undue concentration.'' Now that is happening.

Why will the F.C.C., after asking for some minor divestiture, ultimately welcome a two-giant waltz? For the same reason that the broadcasters' lobby was able to steal tens of billions in the public's bandwidth assets over the past few years: Mr. Clinton wants no part of a communication consumer's ''bill of rights.''

Candidates Bradley, Bush and Gore look shyly away lest trust-luster contributions dry up. Only John McCain dares to say: ''Anybody who glances at increases in cable rates, phone rates, mergers and lack of competition clearly knows that the special interests are protected in Washington and the public interest is submerged.''

Today's populist message comes to you by my old, slow modem.

October 11, 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

FAX: 202/307–2784

Dear Mr. Fones: The purpose of this letter is to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

The creation of a larger monopoly will not only depress grain prices further in this country, but also be detrimental to all consumers.

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S., farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give this your serious consideration.

Sincerely,

Don Nauereud.
Mary Gosserand.

Brooksville, MS
October 11, 1999.
Mr. Roger Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Dear Mr. Fones: As a daughter and wife of farm producers, I have a stake in the future of the American farm family. I am actively involved in the operation and management of our operation. I am also a homemaker—I have three teenage children. My family worked diligently the last eighteen months—long hours, day after day—and we would have lost less money if we had done nothing. This is disheartening to say the least. Cattle and grain prices have remained low and feed and other related costs have been high. I tell you this not to whine but to explain our plight.

The rapid corporate concentration of the world's largest grain and meat handlers is killing the farm family. When we are gone and the people of this country who are accustomed to a relatively inexpensive quality food supply realize what has happened, it will be too late. Please stop the Cargill-Continental Grain sale for the reason that it will further impact grain prices and farm income in my community and in the U.S. in general. Please extend the comment deadline for another sixty days. We must have a competitive market in this country.

Thank you for your consideration of this matter. If you eat, you have a stake in this ruling. When farm families are driven out of business, the cost of foods will skyrocket. Make no mistake about that. If you are a consumer, you are very vulnerable. Mr. Fones, this includes you.

Sincerely,

Lori Chancellor.

September 20, 1999.
Judge Gladys Kessler,
U.S. District Court for the District of Columbia, 333 Constitution Ave. N.W., Washington, DC 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: Presently before you, awaiting your approval, is a ''Final Judgment'' filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

Legal precedent, according to the Department of Justice, requires that ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. ''The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.'''

In its July 8, 1999 ''Final Judgment'' I believe in fact that the Department of Justice has ''breached its duty to the public in consenting to the decree and that its ''Final Judgment'' is not ''within the reaches of the public interest.''

Clearly, as the Department of Justice's own ''Complaint'' states, the Cargill purchase would ''substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices.''

Using the Department of Justice's own figures and criteria we see in its ''Complaint'' that even before this announced purchase the U.S. grain trade was already dominated, if not monopolized, by Cargill and nothing in the Department of Justice's ''Final Judgment'' addresses itself to that important issue.

Likewise, the Department of Justice must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors.

For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest), pork packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and ''sophisticated'' firm, even more capable of strategic, cooperative, and anti-competitive behavior.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States I urge you to recommend that the Department of Justice withdraw its ''Final Judgment,'' study in far greater detail this ill-advised sale

and carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Thank you.

Donald B. Clark,

Convener, United Church of Christ, Network for Environmental & Economic Responsibility.

October 1, 1999.
Judge Gladys Kessler
U.S. District of Columbia, 333 Constitution Ave. NW, Washington, DC 20001.

RE: Cargill/Continental Grain Sale

Your Honor: It is my understanding you are taking public comment regarding the sale of Continental Grain to Cargill. It is with this understanding I write.

I believe every person has a right to the gifts of creations, especially to the necessities of life. Respect for the dignity of the human person also requires that each person has the right to free enterprise, the right to undertake the work that is their calling and the right to fair compensation for that work. This right is compromised when too much control is concentrated to increase the power of wealth of a few. Food, as well as the facilities for production and distribution, should not be concentrated to the benefit of a few.

The Cargill purchase of Continental Grain facilities will increase Cargill's buying power and price control; it will decrease the markets available to farmers and cause farmers to have to transport grain farther, especially if some terminals are closed to increase corporate profits; it will position Cargill to dominate specialty or ''niche'' markets because of the acquisition of Continental's storage facilities (markets that farmers are currently using to try to find profitability in already heavily Cargill-dominated markets).

Family farms are already struggling in the mid-west due to mega hog, mega dairy and mega beef operations. This would put another nail into the already partly closed coffin of family farms. Some of the family farms in my part of Iowa have been in the same family for 100 to 150 years. These families keep my small town alive and thriving.

The already rampant farm crisis is putting a squeeze on farm families which in turn puts a squeeze on the small businesses in my town, which in turn makes me have to drive further to purchase food, clothing and essential items at a greater cost.

I realize that the farming community is only 2% of the political vote but it is 100% of food production. One family farm feed approximately 212 persons. If the current farm crisis continues statistics show 6000 Iowa family farms will go belly up in the next couple years. Should this happen 112,000 non farming people will be affected. There are 49 other states in the union that I haven't even included in these figures.

I've been told that mega corporations are going to be the future of the US. It it my belief that mega corporations will only happen if we give up the fight. America has always been known as the land of opportunity and I see no reason for that to change. As Abraham Lincoln once said, ''Let us have faith that right makes might; and in that faith let us to the end dare to do our duty as we understand it.'' or in the words of Margaret Mead, ''Never doubt that a small group of thoughtful committed citizens can change the world; indeed, it's the only thing that ever has.''

Thank you for listening to me.

Sincerely,

Shari Cummings.

October 11, 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division of Justice, 325 Seventh Street, N.W., Ste 500, Washington, DC 20530.

Via FAX: 202–307–2784

Dear Mr. Fones: As the Executive Vice President and Director of a small rural community bank outside of Memphis, Tennessee, and as the daughter of a farmer. I have personally witnessed the demise of the ''family farmer.'' I have seen ''up close and personal'' the struggles of these hard working people for all of my life. While they seem to easily take into stride their battle with the environmental elements, their struggles with rising production costs and stagnant to declining harvest prices has driven countless operations out of business. Ten years ago, our bank financed about two dozen local operations, and today, we have only two operations remaining viable. Given the very small size of our community, these numbers are quite staggering to our local economy.

Without exception, their demise is due to the ever increasing production costs and stagnant or declining harvest prices. One does not habe to look very hard at the reason for this problem. The biggest issue that has driven hundreds of thousands of US family farmers is the rapid corporate concentration of the world's largest grain and meat handlers. While the family farmers harvest prices remain stagnant, or even declined, the prices in the grocery store has SOARED!! Most of the general population is oblivious to this issue, but, when they are finally aware of it, it will be too late!

I can no longer sit idly by and not speak on behalf of this vital segment of our nations economy, but also on behalf of all consumers. With the absence of the family farmer, the cost of food will skyrocket.

It is for this reason, that I implore you to prevent the Cargill-Continental Grain sale and stop the negative impact on grain prices and farm income in my community and across this nation. Please extend the comment deadline for another sixty days. You have the power to ''do the right thing,'' or else we will be ''paying the price'' for generations to come.

Sincerely.

Peggy B. Daugherty,

Executive Vice President, The Bank of Moscow, Moscow, Tennessee.

Mr. Roger Fones,
Chief of Energy & Ag. Section, Antitrust Division, U.S. Dept. of Justice, 325 7th St., N.W., Suite 500, Washington, D.C. 20530.

Sir: Please do not approve of the purchasing of the grain division of Continental by Cargill.

We raise cattle, wheat and barley in this area of Montana.

There is little competition in the world markets placing the farm and ranches at the mercy of a few international companies. There will be no chance to improve the depressed prices with so little competition. Our rural life style will continue to deteriorate as low prices are driving farmers and ranchers out of business.

Sincerely,

Lymen and Darlene Denzer.

Dewell Motor Co.

P.O. Box 109, Fowler, Kansas 67844

10 October 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530.

FAX: 202/307–2784

Dear Mr. Fones: I am writing this to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

Are you aware of what the creation of a larger monopoly will do, not only to grain farmers in this country, but also to all consumers?

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S., farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give my request your serious consideration.

Sincerely,

Steve Dewell.

Dobbs Ranch

957 Manns Creek Road ~ Weiser, Idaho 83672–5523

October 11, 1999.
Mr. Roger W. Fones
Chief of Transportation, Energy and Agriculture Section

Dear Mr. Fones: Please extend the public comment period for a minimum of 60 days on the Continental/Cargill Grain merger. Please conduct a more thorough investigation of this sale before submitting a Final Judgment in this matter.

Please do this for your children, grandchildren and all future generations of food consumers in this great country. The monopolization of America's food supply is one of the most frightening things that is happening in this country. As a family

farmer/rancher I beg you to continue your investigation.

Sincerely yours,

Grant and Mabel Dobbs.

Blvd Island, MN

September 25, 1999.

Mr. Roger W. Fones,
US Dept of Justice, 325 7th Street NW Suite 500, Washington, DC 20530.

Dear Mr. Fones: Considering the months of hearings regarding Bill Gates's Micro Soft monopoly, and (over a decade ago) the breakup of AT&T because they were too large, it seems unfathomable that you would *Consider* giving Cargill total control of the world with the Cargill-Continental merger. Cargill is already a monster that everyone is afraid of. Have you seen *any* news on *any* media that would dare till about Cargill's present control . . . let alone the total control they would have after this merger? *No* . . . Furthermore you wont because Cargill has the power to crush any media that would tell the story. Cargill has cleverly contributed to charities that don't want their funds cut off so NO ONE is objecting.

Cargill already owns the docks in major foreign countries so ships of grain other than Cargill's are not allowed to dock.

We live in rural Minnesota where the independent farmer has few options. Please allow us the few we have left.

This affects much more than farm prices—this merger spells doom for our entire free enterprise system.

Please have the courage and backbone to stop this Cargill-Continental merger!

Sincerely,

C.K. Dresser.

Jordan Valley, OR 92910
September 11, 1999.

Dear Mr. Fones: We are cattle producers in the state of Oregon and we are requesting that you conduct a more thorough investigation of the Cargill/Continental Grain companies. This will exaserbate the detremental effects of concentration in the grain and livestock industries. Agriculture in America is in trouble, involving the safety of our food supply the survival of rural communities and the survival of agriculture producers. To have this much concentrated purchasing power in the hands of one company, is unthinkable. It shouldn't be difficult for our government to recognize the inherant with such a merger.

Also, we would ask that you extend the comment period on the merger.

Thank you.

Richard & Margene Eiguren.

Englehart Ranch

Meadow, SD 57644–7502

Judge Gladys Kessler

U.S. District Court for the District of Columbia, 333 Constitution Ave. NW, Washington, D.C. 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: Presently before you, awaiting your approval, is a ''Final Judgment'' filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

Legal precedent, according to the Department of Justice, requires that ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. ''The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' ''

In its July 8, 1999 ''Final Judgment'' I believe the Department of Justice has ''breached its duty to the public in consenting to the decree and that its ''Final Judgment'' is not ''within the reaches of the public interest.''

Clearly, as the Department of Justice's own ''Complaint'' states, the Cargill purchase would ''substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat, in these markets will engage in anticompetitive coordination to depress farm prices.''

Using the Department of Justice's own figures and criteria we see in its ''Complaint'' that even before this announced purchase the U.S. grain trade was already dominated, if not monopolized, by Cargill and nothing in the Department of Justice's ''Final Judgment'' addresses itself to that important issue.

Likewise, the Department of Justice must consider more than the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors.

For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest), pork packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and ''sophisticated'' firm, even more capable of strategic, cooperative, and anti-competitive behavior.

I've seen our market opportunities slowly shrinking. We currently have wheat in storage going into its third year in the bin. Why, because the price is so low on today's market that it is worth more to leave it in the bin as an asset on our bank's financial statement. As the market for wheat becomes more concentrated in the hands of fewer traders, the farmer will receive less, the huge agricorporations will depress the market at will and eventually force the farmers into bankruptcy. In South Dakota we have little access to wheat buyers, we are dependent upon those in our local area now currently dealing with farmer owned cooperatives who ship it to the big terminals by truck. This merger will remove what little competitiveness now remains in the wheat trade. Making Cargill even bigger will give them even greater power in all segments of agriculture. The competition is being narrowed to the point that the family farm, which has been the very foundation of this great nation, will go down in bankruptcy, despair, and desolation. This corporatization of agriculture will destroy us, the family rancher and farmer. We are human beings (generations of families) that have worked, nurtured, conserved, and loved the land while feeding this nation's population at the ''lowest cost per capita income'' of any country in the world.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States, I urge you to recommend that the Department of Justice withdraw its ''Final Judgment''. Please study in far greater detail this ill-advised sale; carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Sincerely,

Llewellyn Englehart.

Karen Englehart.

Buffalo Livestock Auction

Buffalo, Wyoming

To: Mr. Roger W. Fones
Chief of Transportation, Energy & Agriculture.

I am urging you to please conduct a much more thorough investigation into the Cargill/Continental Grain sale before submitting a Final Judgment on the matter. Contrary to what the large multi national corporations tell you, putting the power into the hands of a few does not increase competition in the marketplace, but is having, and will only get worse, a devastating effect to the independent Ag producers in this country.

I would also encourage you to please extend the public comment period for another sixty days to allow this matter to be more fully investigated and commented on.

Thank you,

Jay Godley.

Epworth, IA 52045

We believe: Every person has a right to the gifts of creations, especially to the necessities of life. Respect for the dignity of the human person also requires that each person has the right to free enterprise, the right to undertake the work that is their calling and the right to fair compensation for that work. This right is

comprised when too much control is concentrated to increase the power and wealth of a few. Food, as well as the facilities for production and distribution, should not be concentrated to the benefit of a few.

We live on a centery farm. And our oldest boy, 20 years old, would love to go farming with us and someday take over the centery farm. But because of the hag prices we had to liquidate our farrow to finish hog operation. All we have left now is our grain. Letting Cargill and Continental gain together would take away another buyer and would not give the family farms a promising future. Help save the Family Farms.

Dan & Judy Gotto.

Epworth, IA 52045

Dear Roger: I urge you to revisit the investigation of Cargill/Continental sale and to extend the comment period for at least 60 days.

It is my feeling that the family farm will not survive if we have all these large companies going together and not having any competition.

We believe: Every person has a right to the gifts of creations, especially to the necessities of life. Respect for the dignity of the human person also requires that each person has the right to free enterprise, the right to undertake the work that is their calling and the right to fair compensation for that work. This right is comprised when too much control is concentrated to increase the power and wealth of a few. Food, as well as the facilities for production and distribution, should not be concentrated to the benefit of a few.

Yours truly;

Grace Gotto.

Bowling Green, NC 63334

To Roger W. Fones: For the Justice Department's stand in siding with the multinational grain Cartel System, today's AG markets have totally stolen from independent family farmers. I believe this to be the most daring issue to ever be suffered by the Family Farmers and Rural Economics, Consumer and Taxpayer Mergers are the stealing of open markets, and this action now has the Seal of Approval from many Federal Agencies to hold accountable.

These agencies have failed in their selected duties to perform on behalf of the Public to the Common Welfare and Protection of all United States Citizens.

George Grover.

Okolona, MS 38860
October 13, 1999.
Roger W. Fones,
Chief, Transportation Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Dear Mr. Fones: Please stop the Cargill-Continental Grain sale. It would further impact grain prices and farm income in my community and in the U.S. in general. Please extend the comment deadline for another sixty days.

This sales would be extremely detrimental to the U.S. family farmers. Our farm has operated for over 50 years, and is really feeling the effects lately. It was very obvious that somebody, the middleman, made money during the hog crisis. The farmer was paid very little for the hogs, but the prices in the supermarkets never went down.

Thank you for your time in considering this.

Sincerely,

Bob Gregory.

Okolona,, MS 38860

Cresco, IA 52136
October 6, 1999.
Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 321 Seventh Street, Suite 500, Washington, DC 20530.

Roger W. Fones: I am an Iowa resident concerned about the impending takeover of the Continental Grain facilities by the Cargill Company. With this merger, the ability of the Cargill Company to price control and decrease the markets available to farmers will not only effect the farmers but every person in the United States who buys food. With Cargill Compnay having such a large monopoly they will be able to overwhelmingly control the U.S. grain trade. I urge you to rethink your investigation of the Cargill/Continental sale.

The antitrust laws do not seem to include farming and farm products; I think it is time for that to be reevaluated in the light of this impending merger.

Thank you for your time and consideration.

Mary Hargrafen.

Cresco, IA 52136
October 6, 1999.
Judge Gladys Kessler,
U.S. District Court for the District of Columbia, 333 Constitution Ave., NW, Washington, DC 20010.

Judge Gladys Kessler: I am an Iowa resident concerned about the impending takeover of the Continental Grain facilities by the Cargill Company. With this merger, the ability of the Cargill Company to price control and decrease the markets available to farmers will not only effect the farmers but every person in the United States who buys food. With Cargill Compnay having such a large monopoly they will be able to overwhelmingly control the U.S. grain trade. I urge you to rethink your investigation of the Cargill/Continental sale and extend the comment period for a longer period so that more people can comment.

Thank you for your time and consideration.

Mary Hargrafen.

Callicrate Feedyard

P.O. Box 748, St. Francis, KS 67756

October 11, 1999.
Mr. Roger W. Fones
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20503.

Dear Mr. Fones: Mergers and concentration are out of control. Please stop the Cargill-Continental Merger as it will further deteriorate grain prices and farm income in my community and in all of the rural communities in the U.S.

Companies like Cargill, ConAgra, ADM, Farmland and IBP are eliminating our safe food system and bankrupting us. Our small towns and communities are being devastated by their low fixed commodity prices.

Please enforce antitrust laws and help the people of this nation.

Sincerely,

Vernon E. Heim,

Manager.

The Organization for Competitive Markets (OCM)

P.O. Box 540061, Omaha, NE 68154–0061

September 16, 1999.
Mr. Roger W. Fones
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20503.
Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Mr. Fones: This letter concerns important considerations that may have been over looked by the Department of Justice during its review of the proposed merger of Cargill and Continental Grain.

On November 30, 1998, former Congressman Neal Smith of Iowa sent a detailed letter (copy enclosed) to Attorney General Janet Reno emphasizing the importance of looking at the futures trading positions of the two companies in order to understand the impact of the proposed merger on the price of grains and soybeans which are determined in the futures markets (see John W. Helmuth, *Grain Pricing*, Commodity Futures Trading Commission (CFTC), Economic Bulletin Number 1, September 1977.)

While I understand individual company information cannot be made public, the Department of Justice has given no public indication that you have performed any of the essential analysis called for in Mr. Smith's letter. The DOJ cannot claim to have adequately investigated the impacts of the merger without analyzing the fundamental elements called for by Mr. Smith.

The judge reviewing this matter cannot make an informed decision without this fundamental information.

Sincerely,

John W. Helmuth, Ph.D,

Agricultural Economist, Member of the Board, OCM.

November 30, 1998.
Attorney General Janet Reno
Main Justice Building, Room 5111, 10th and Constitution Avenue, Washington, DC 20530.

Re: Cargill Buyout of Continental Grain

Dear Attorney General Reno: Please be advised that, while I am an agricultural producer like millions of others, I do not represent any of the parties on either side

directly involved in the subject matter of this letter, but am sending this letter because of my long-time interest in international grain marketing during the more than 30 years in Congress during which I authored the CFTC Act and other legislation dealing with grain exports.

The recent announcement of Cargill's plan to buy the grain operations of Continental is subject to federal government approval pending antitrust review. I believe the outcome of that review will have far reaching effects on US and international grain markets for decades to come. The size of the two companies (measured by market share) is of obvious importance to these considerations, especially since there are so few international grain trading companies. But there are other equally important considerations that should be taken into account by any comprehensive, objective review. These are discussed below.

The Importance of Information in World Grain Markets

Detailed, accurate, daily information on literally hundreds of variables impacting the worldwide supply and demand of grain is essential for any company engaged in grain marketing. There are two sources of such information: public and private.

Public information is generally gathered and disseminated by governments around the world. The accuracy of such information varies across countries. US, Canadian, and European information generally set the standard for timely accuracy. By definition, public information is available to anyone and has as one of its goals to provide ''a level playing field'' for anyone buying and selling grain.

Private information is gathered by companies and/or individuals and is usually not disseminated to others, or is disseminated selectively to the advantage of the ''owner'' of the information. Arguably some of the most valuable private information involves details of major transactions engaged in by grain trading companies. The larger the company and the larger the transaction, the more valuable is the ''inside'' information.

For example, if the largest firm in the industry makes a large sale of US wheat for export, public knowledge of such a sale is likely to result in higher US (and World) wheat prices. It is very much in the exporting firm's best interest to buy the US wheat (and possibly large numbers of US wheat futures contracts) before knowledge of the export sale becomes public, and before wheat prices increase. Such transactions, based upon inside knowledge are not prohibited in cash or futures markets for agricultural commodities, as they are in the Securities markets.

Placed in perspective, large grain trading companies have access to the same public information everyone else has, plus they have knowledge of their own transactions, and information gathered by their worldwide offices and subsidiaries, and information gathered by their privately owned reconnaissance satellites. Thus, while the playing field may be level with regard to public information, and US farmers may voluntarily give away valuable supply information about their crops for USDA crop surveys out of a sense of national duty, private companies are making daily trading decisions based on jealously guarded private (mostly demand) information.

Given this fact, combining the number one and number two companies in the grain marketing industry not only aggregates their physical facilities, it also aggregates their inside information gathering capabilities and increases at least proportionately their information advantage in the US and World grain markets.

Number of Buyers, Price Competition

Price competition exists, if and only if, a market is characterized by a large number of buyers and sellers. ''Large number'' is not defined by economists. However, most economists would agree it is probably greater than two.

With respect to the market for farmers' grain at the local level, the number of buyers appears to be as low as one or two. To my knowledge, the federal government has not documented the number of grain buyers since the mid-1970's. In any event, when a local market currently has two buyers which happen to be Cargill and Continental, there will be only one buyer if the companies merge.

However, it should be understood that the local impact on grain prices will be mostly confined to what is called ''the basis'' which is the nearby futures price adjusted to reflect local conditions. The major price impact, in dollars and cents per bushel, is likely to occur in the grain futures markets.

The Number of Entities Making Economic Decisions

Fundamental to consideration of the Cargill acquisition of Continental Grain is to weigh the impact on economic decision making. Over fifty years ago Noble Laureate Frederick von Hayek elucidated the core strength and flexibility of market capitalism as being the making of economic decisions by many relatively small resource owners, who are close to the economic circumstances of time and place. Such market structure results in the most efficient use of resources and competitive markets. Hayek clearly pointed out that the concentration of economic decisionmaking in a relatively small number of individuals, regardless of whether those individuals are government bureaucrats as in the former Soviet Union or corporate executive in large companies, the result is the inefficient use of resources and non-competitive markets.

If Cargill acquires Continental, economic decision making clearly will become more concentrated and the efficiency of capitalistic grain markets is very likely to decline.

A Level Playing Field: Grain Markets Compared to Securities Markets

Federal regulations affect grain markets based upon the authority, inter alia, of the Commodity Exchange Act and the Commodity Futures Trading Commission Act. Federal regulations affect securities markets based upon the authority of the Securities Exchange Act. While these laws contain equally clear and strong language with respect to fraudulent activities, regulations promulgated by enforcement agencies are markedly different in the grain (futures) markets and the securities markets.

The table below highlights the difference in federal enforcement of anti-fraudulent regulations between the grain futures markets and the securities markets.

COMPARISON OF ANTI-FRAUDULENT REGULATIONS

	Securities markets	Grain futures markets
Insider trading prohibited	yes	no.
Short selling prohibited unless last price change was an up-tick.	yes	no.
Short selling limited to actual stock certificates borrowed from owner.	yes	no.

International grain companies with overseas offices also have a way to avoid the speculative limits applying to local grain elevators and producers. Despite efforts, which have been strongly opposed by those who benefit, this loop hole has not been closed. In one instance, twice as much grain was covered in the futures market as the customer took delivery of, and before the public was aware of the sale, and the balance was then sold at a big profit after the public overreacted to the exaggereated report.

In considering any merger in an area so involved with international trade affecting the most local of U.S. businesses, and such a history, great caution should be observed.

The American public and American farmers in particular, are entitled to an answer to the question: ''Why are the playing fields different?''

If the two largest U.S. securities firms were proposing a merger, federal authorities would undoubtedly consider the impact on securities markets. No less is necessary regarding the Cargill-Continental merger and its potential impact on grain futures markets.

Consider the Impact on Other Agricultural Markets

Finally, an astute observe reported that Continental is the largest cattle feeder in the U.S. (an industry that has been rapidly concentrating over the last two decades) and that public statements by Continental officials indicate a company objective of expanding its cattle operations. Such an objective could be realized with the proceeds of the sale of Continental's grain operations.

While considering the grain market implications, federal officials should also consider the possible impacts on other agricultural markets such as livestock. Such impacts could be substantial and far reaching.

Sincerely,

Neal Smith,

Former Member of Congress from Iowa.

Minnetonka, MN
October 8, 1999.
Roger W. Fones
Chief, Transportation, Energy & Agriculture

Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Dear Mr. Fones: I have been following with great interest the Cargill-Continental merger. I work in an office with many policy analysts and they understand in a more technical way what is going on. I do the administrative work and have never really been interested in technical jargon except to file it. But I am very interested in the lives of people. No longer should people's lives be caught up in the technical jargon but it is time to seriously take a look at the holocaust happening within the rural communities of our nation. It is a slow demise of the family farmer and if you ask the farmer they are slowly losing hope for a culture that made this country great.

I also worked at Cargill many years ago, I am aware of the hug offices, the money that they have accrued on a personal level is incredible and that money was made off the very product that our family farms produced for you and I to eat. It is a product that we use everyday of our lives in some way or other and the farmers worked hard everyday of their lives to bring it to us. They were not looking for ways to make more money to satisfy their stockholders, they did not have an insatiable need for more things. What they did was take their land, put the seed into the ground tend to the crops, harvest it and then turned around and sold it to people like Cargill and Continental. I was always amazed when I worked at Cargill the amounts of product that were shipped from ordinary farmers and the amounts of money they made on trading and selling it. I didn't understand at that time nor was I very interested but today as I watch and listen to farmers story my heart is breaking for those people you are not listening to.

I don't want to be a part of our country's holocaust when it comes to our farmers. I do know that by letter in the Cargill Continental merger happen you are saying to the farmers you are not very important but money is and the bottom line is money not people. How can I say that? Because it is the message I'm hearing loud and clear from you. Whitney McMillan, Cargill McMillan, and the other McMillan's have more money that I or most of our farmers will ever dream of. Who do you think they made that money from? How much is enough? And do we have to lose a whole culture so they will make enough to satisfy their insatiable need for more money? Look at who they say they are competing with how many companies is it really? Some of the competition comes from within. My husband is in the wallcoverings business competition is there all the time for him but he doesn't go out and buy all the business out so he can make more money. We are satisfied with the money we make, we work hard for it but it allow us to live with integrity.

You can listen to all the technical jargon, you can look at all the numbers but in the end we are talking about people's lives here. Our farmers need us to stand with them. They need the very government that they have helped support through hard work and toil to stop and listen very closely to do the right thing that will make the most money. Hitler was working on economic health when he came into power and look what happened. Please stop this merger, let the farmers be heard throughout the land, help them to find solutions don't put the nails in the coffin of rural America. These people are your neighbors, your friends, your community, remember it is people you are dealing with here not just numbers.

Thank you.

Sincerely,

Kathy Hiltsley.

Tulsa, OK 74133
10 October 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 7th Street, NW, Suite 500, Washington, DC 20530.

FAX: 202/307–2784

Dear Mr. Fones: I am writing this to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

Are you aware of what the creation of a larger monopoly will do, not only to grain farmers in this country, but also to all consumers?

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S., farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give my request your serious consideration.

Sincerely,

Barbara Hook.

Madison, MN 56256
October 7, 1999.
Mr. Roger W. Fones
U.S. Dept. of Justice, 325 Seventh St. NW, Suite 500, Washington, DC 20530.

Dear Mr. Fones: I am writing to you because of my concern abut the proposed merger between two grain handling giants. I am a pastor of a Catholic parish of about 600 people in western Minnesota. Our economy in Madison is very much tied to agriculture. When farm commodities are depressed, it does not simply mean hard times. Businesses fold and do not reopen. More and more of our population flees to other towns and areas. Of course there are other contributing factors, but there is no denying that an unhealthy agricultural sector spells rapid decline for our town and region.

Ten years ago, it was well known that 90% of the world's grain exports were done through just five corporations. Cargill and Contentntal are two of the five. There is already too much concentration in this area of agriculture. This merger would mean even less competition in the marketplace. It would be great for the few corporations left, but it would certainly be detrimental to small and medium sized farms that are less able to hang on to their grain until markets improve. Even if one believes that bigger farms are always better, there is considerable danger in allowing such large corporations to merge when there is already very limited competition. Add to this the fact that we are dealing with food, and the danger of monopolizing the market becomes even more grave.

For all of these reasons, I strongly urge you and your department to disallow this merger between Cargill and Continental. Thank you for your consideration.

Sincerely,

Rev. Jeff Horejsi.

Roger W. Fones
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Dept. of Justice, 325 7th Street NW, #500, Washington, DC 20530.

Please stop the Cargill-Continental Grain Sale because it will hurt the small farmers in my area and the U.S. It will also eventually raise food prices. Please extend the comment period for 60 days.

Reena Kazmann.

October 07, 1999.
Roger W. Fones,
Chief, of Transportation, Energy & Agriculture Section, Antitrust, Division, 325 Seventh St. NW, Suite 500, Washington, DC 20530.

Dear Sir: I am writing to concerning the Cargill-Continental merger. I wanted to let you know that the market for our grain on the farm is already highly concentrated. The Cargill-Continental Merger would spell doom for the independent farms we have left on the prairie. Small farmers are struggling the way it is. Please consider this before you vote.

Sincerely,

Robin Kleven.

Corporate Agribusiness Research Project

P.O. Box 2201, Everett, Washington 98203–0201

October 8, 1999.
Roger W. Fones
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street N.W., Suite 500, Washington, DC 20530.

Dear Mr. Fones: In accordance with the ''Antitrust Procedures and Penalties Act'' (APPA) of the U.S. Code I am enclosing a recent issue of *The Agribusiness Examiner,''* a weekly e-mail newsletter which I edit and publish devoted to monitoring corporate agribusiness from a public interest perspective.

I am sending this copy to you as my way of making a ''public comment'' regarding the Justice Department's ''Final Judgment'' regarding the sale of Continental Grain's grain merchandising division to Cargill. I will look forward to the Department's comments in the Federal Register regarding the various issues raised in this issue of my newsletter.

I should also note that this newsletter is distributed on a weekly basis to nearly 850 people through the U.S. and the rest of the world, including many family farmers, farm organizations and public interest food advocates.

Thank you for your time and consideration of the enclosed.

Sincerely,

A.V. Krebs,

Director.

Subject: The Agribusiness Examiner #50
Date: Fri. 08 Oct 1999 01:15:46–0700
From: ''Albert V. Krebs''
(avkrebs@earthlink.net)
To: one@earthlink.net

SPECIAL EDITION

The Agribusiness Examiner

Monitoring Corporate Agribusiness From a Public Interest Perspective

Issue #50 October 8, 1999

A.V. Krebs, *Editor/Publisher.*

Urgent Appeal: Effort to Block Cargill/Continental Sale—Public Comment Deadline at Hand

October 12, 1999 remains the deadline for public comment on the U.S. Department of Justice's Anti-Trust Division's ''Final Judgment'' relative to the sale by Continental Grain of its grain merchandising division to Cargill, the world's largest grain trader.

After characterizing what it publicly called an almost year long ''investigation'' of the sale the Department of Justice (DofJ) in fact filed a formal ''Complaint'' with the U.S. District Court for the District of Columbia. However, the DofJ totally neutralized its ''Complaint'' by filing it on the same day (July 8, 1999) and at the same time that it furtively filed a consented ''Final Judgment,'' agreed to by all parties. While the DofJ's ''Final Judgment'' now awaits the approval of presiding U.S. District Court Judge Gladys Kessler, the public comment period regarding the Department's decision remains open until October 12.

In their ''Complaint'' the DofJ formally charged that Cargill's purchase would ''substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices.''

Commentary

Liberals and progressives and those individuals and organizations that seemingly care so deeply about the plight of the nation's family farmers may pride themselves on being on the cutting edge of today's economic and social issues such as genetic engineering and the upcoming World Trade Organization meeting in Seattle, Washington.

At the moment, however, agrarian populists and thousands of family farmers throughout the U.S. see such issues, as important as they may be for the future of agriculture, merely as additional logs on that fire that is intended to smoke them out of the business of farming.

Meanwhile, the crucial issue that is today deeply distressing family farmers to the point of near hopelessness is the rapid corporate concentration within agriculture as exemplified by the recent announced purchases by Cargill of Continental Grain's merchandising business and Smithfield Foods buying up of Murphy Family Farms and Tyson Food's Pork Group.

While Dan ''Of the Grain Trade, By the Grain Trade and For the Grain Trade'' Glickman may be ''very pleased that the Department of Justice has taken * * * steps to protect American farmers from the potential adverse effects'' of the Cargill/Continental sale by its recent ''Final Judgment'' and divestiture order, farmers from Stockton, California to Hampton Roads, Virginia see the consolidation of two of the world's largest grain traders as nothing but more economic and social adversity for them and their families.

Thus, in an attempt to force the Department of Justice anti-trust division to conduct a more thorough investigation of the Cargill/Continental sale, efforts are currently underway to forestall the Department from submitting its ''Final Judgment'' for the approval to presiding U.S. District Court Judge Gladys Kessler. This ''Special Issue'' of The Agribusiness Examiner is part of that effort.

For once, not simply acting as a mere mouthpiece for corporate agribusiness, but actually serving as ''a voice for American Agriculture,'' American Farm Bureau President Dean Kleckner, has rightfully observed that ''the time has come for the Justice Department to have someone with agricultural expertise to oversee such concentration issues. Agriculture is a unique industry. It requires someone with the experience and background to ensure anti-trust laws are not being violated and that opportunities for all farmers are protected''

The hour is late, the deadline for public comment on the Cargill/Continental ''Final Judgment'' is Tuesday, October 12.

No matter what one's degree of involvement in various and related public interest issues might be or what political or ideological persuasion one might be if they care about who grows their food, who produces and manufacturers it, its availability, its safety, its cost and the future of family farming agriculture the effort to block this sale is one that deserves their immediate and highest priority.

The ''Antitrust Procedures and Penalties Act'' (APPA) of the U.S. Code provides that any person may submit to the United States written comments regarding the proposed ''Final Judgment.'' Any person who wishes to comment should do so by October 12. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Legal precedent, according to the DofJ, requires that ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree.

''The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' [A] proposed decree must be approved even if it falls short of the remedy the court the would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of the public interest.'.''

Letters specifically demonstrating and/or documenting the impact of Cargill's monopoly of the grain trade and how the Continental purchase will affect that situation on one's own family farm operation or upon the rural community in which one lives will be most valuable. Copies of such letters should also be sent to the letter writer's state attorney general's office urging that office at the same time to utilize their good offices in not only calling upon the U.S. Department of Justice to revisit its ''investigation'' of the Cargill/Continental sale, but requesting that the deadline for comment be extended another sixty days to December 12.

Whether or not Judge Kessler concludes that the consent decree is ''within the reaches of public interest'' the corporate audaciousness of Cargill in attempting to summarily own this nation's grain trade with its purchase of Continental's grain assets is breathtaking. One need only look at the facts brought to light in the DofJ's own ''Complaint'' to see such covertness.

OCM'S Fred Stokes: ''A Dark Day for Agriculture''

''If the Cargill merger goes through, it is a dark day for agriculture,'' is the way Fred Stokes, a Mississippi cattlemen and recently elected President of the Organization for Competitive Markets (OCM) describes the Cargill/Continental sale. ''The loss of Continental Grain as a competitor while creating a more powerful Cargill will drive farmers' share of the retail dollar even lower. Continental Grain will then plow the new money into further consolidating the livestock industry.''

Alone among farm organizations who have denounced the Department of Justice's ''Final Judgment'' decree the Organization for Competitive Markets is a non-profit, non-partisan organization of farmers, ranchers, academics and attorneys which provides information to the public about the importance of true competition in the agricultural marketplace.

Keith Mudd, a Missouri farmer and OCM board member, adds, ''Farmers used to have several choices of elevators to market their grain. Mergers have reduced the number of buyers to two in many geographic areas. If the Cargill merger goes through, many farmers will have only one buyer. I fail to

understand how the Department of Justice can view this merger as promoting competition.''

''The immediate effects of the merger will be less market choices for farmers, more control over exports and a heightened ability by Cargill to unilaterally affect the futures markets,'' stated Dr. John Helmuth, agricultural economist and OCM board member. ''The subsequent effects will be pressure for other grain merchandisers and their customers to merge in order to equal the market power of Cargill.''

OCM's Jon Lauck and other Midwest farm activists have been meeting in recent weeks with both Republican and Democrat state attorney generals, in efforts to line up support for a lawsuit to block the sale.

''Not too long ago,'' Lauck recently told *The Corporate Crime Reporter,*'' antitrust officials would have looked at something like this and decided—this is obviously too large, these are two dominant players. We are never going to allow something like this to go through.

''Given the DOJ's concerns about the anticompetitive consequences of the merger,'' Lauck stresses, ''it is odd that no effort is made to justify its approval of the merger. The fears of antitcompetitive behavior set forth in the 'Complaint' are not counter-balanced with a recognition of post-merger efficiencies, for example. With no apparent benefit to the merger and significant concerns expressed by many parties about its approval, the natural reaction would be to halt the merger. This response is further justified by the obvious difficulties that accompany the reversal of market concentration once it has become an economic fact.''

One argument that defenders of the recent wave of corporate mergers within agribusiness have sought to make is that such mergers, specifically within the grain trade, are necessary so as enable U.S. companies to compete with foreign ''parastatal monopolies.''

Recently, the corporate agribusiness dominated International Policy Council on Agriculture, Food and Trade (IPC) issued a call for the elimination of parastatal monopolies in the next round of world trade talks. Although the Australian and Canadian Wheat Boards were not mentioned by name the IPC report bemoaned the fact that the monopoly power of such agricultural state-trading enterprises (STE's) ''have the ability to distort domestic markets and international trade flows,'' even if they are not directly supported by government payments.

''As long as they enjoy exclusive powers or advantages not shared by their competitors, monopolies will not behave like ''at risk'' enterprises,'' the IPC said. ''To end the resulting market distortions, the monopolies themselves should be eliminated, preferably by the end of the implementation period of the next round.''

But, as Dr. Helmuth has noted, ''when fewer and fewer individuals make more and more of the economic decisions, whether those individuals are in government or big business, the results is anti-competitive, inefficient and harmful to society as a whole; when more and more individuals make more and more of the economic decisions, the result is more competitive and more efficient and beneficial to society as a whole.

''There is even greater irony in that the principal advocates of centralized economic planning—the former Soviet Union and Eastern European countries—are abandoning it as an economic failure, at the very time American industries are becoming more and more centrally planned by those few firms with greater and greater economic power resulting from ever increasing industry concentration,'' he adds.

Cargill: To Become More Powerful and Sophisticated Firm ''Capable of Strategic, Cooperative and Anti-Competitive Behavior''

In a recent letter to Roger W. Fones, Chief of the Transportation, Energy & Agriculture Section of the Antitrust Division, United States Department of Justice, Organization for Competitive Markets Jon Lauck wrote that Cargill's acquisition of Continental Grain Company ''would unify the second and third largest grain traders in North America, which export 40% of American agricultural commodities.''

Specifically, Lauck, the author of a law review article entitled ''Toward an Agrarian Antitrust,'' 75 *North Dakota Law Review* (August/September 1999, objected ''to the analysis used by the Department of Justice when reviewing the acquisition. DofJ's analysis: (1) fails to consider the wider concentration in agricultural markets beyond grain buying; (2) fails to consider the continuing potential for anticompetitive behavior in the post-merger market; (3) fails to show that the divested remnants of Continental will be a competitive force absent a large network of elevators which buy grain; (4) fails to consider the nature of the grain selling market; (5) fails to consider the economic disorganization of farmers which can be exploited by powerful buyers; (6) fails to consider information disparities in agricultural markets; (7) fails to explain the benefits of the merger; (8) and fails to consider a range of statutes that Congress intended courts to consider when making decisions about agricultural markets.

''In recent years,'' he continues, ''agricultural processing markets have become highly concentrated. From a top-five concentration ratio of 24% in the early 1980s, for example, the beef-packing sector's five-firm concentration ratio has grown to 85 percent. Similar statistics apply to several other sectors of the agricultural processing economy.

''The DofJ's analysis did not consider the wider context of consolidation in the agricultural system and instead focused on the grain buying activities of Cargill and Continental. Growing concentration in agricultural markets should have been considered by the DofJ given the continuing consolidation of agribusiness firms,'' he adds.

''It was the growing power of agribusiness firms that triggered concerns among farmers and inspired the passage of the Sherman Act. And it was continuing concentration in agricultural markets, particularly through merger, that prompted passage of additional antitrust statutes such as the Clayton Act. The importance of the antitrust laws to farmers is explained by the difficulties inherent in farmers bargaining with large and powerful agribusiness buyers. Legislators and courts have fully recognized these concerns in statutes and in cases, respectively, but the DOJ's merger analysis failed to weigh these considerations.''

Lauck's letter goes on to warn the Department of Justice that it ''must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors. For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest), pork packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production.

''Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time. The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and 'sophisticated' firm, even more capable of strategic, cooperative, and anti-competitive behavior.

''The DofJ argues in its complaint that within particular draw areas very few firms buy grain. It argues that if Continental's operations where absorbed 'Cargill would be in a position unilaterally, or in coordinated interaction with the few remaining competitors, to depress prices paid to producers and other suppliers because transportation costs would preclude them from selling to purchasers outside the captive draw areas in sufficient quantities to prevent the price decrease.' Divestitures in a few of these markets as proposed by the DofJ does not address this problem. Even with the divestitures, grain buying would remain heavily concentrated and susceptive to collusive and cooperative activity,'' Lauck's letter warns.

''Furthermore, it is unclear how Continental will remain an effective competitor with Cargill after selling almost all of its elevator capacity. The few facilities that will not be acquired by Cargill hardly constitute a legitimate competitive threat. As the DofJ emphasized in its complaint, grain buying involves a large-scale network of facilities. The few remaining Continental facilities, stripped of their internal networks which provide them with competitive flexibility and information about grain flows, will be powerless in comparison with Cargill, with its $51 billion in annual revenues and 81,000 employees in 60 different countries.

''Continental's decision to sell off its grain buying operation may also indicate that it no longer considers grain buying a priority. In

short, there is no assurance that the remaining facilities will even compete in the markets that concerned the DofJ. Given the need for a network of elevators to compete in the grain buying business, it is also highly unlikely that any new firms will enter the market to challenge Cargill. The DofJ openly concedes in its complaint that it is 'unlikely that Cargill's exercise of market power will be prevented by new entry, by farmers and other suppliers transporting their products to more distant markets, or by any other countervailing competitive force'.''

Lauck concludes his carefully documented 13-page letter to Fones by emphasizing that ''given the importance of this merger and the constraints on state action if the consent decree is approved, I respectfully request that the comment period for this merger be extended another sixty days to December 12th. Several parties have expressed interest in commenting on the merger and will not be able to do so by October 12th. In the interest of a fair hearing on this critical matter, I urge DofJ to support a lengthening of the comment period, as allowed under the Tunney Act. If the DofJ and the court do not see fit to extend the comment period, I urge the court to reject the proposed consent decree for failing to consider the factors set forth herein.''

Iowa State Study: Why Did Continental Sell? Why Did Cargill Become a Buyer?

Prior to the Department of Justice's ''Final Judgment'' Iowa State Department of Economics professors Marvin Hayenga and Robert Wisner addressed the questions of why Continental sought to sell its grain merchandising division and why Cargill became such a willing buyer.

The complete text of the Hayenga-Wisner paper can be viewed at: *http://www.econ.iastate.edu/outreach/agriculture/marketing/hayenga.*

Professors Hayenga and Wisner note in their January, 1999 paper, ''Cargill's Acquisition of Continental Grain's Grain Merchandising Business,'' that industry speculation was that Continental excelled in very large volume bulk export trading, and had not diversified enough into the value added processing to compete effectively in a market environment where export volumes have been sharply reduced in recent years.

''To compete effectively by restructuring their operations at this late date,'' they add, ''would require too much capital and too much risk. Continental's storage capacity declined significantly over the last ten years, while Cargill, ADM and Peavey [ConAgra] expanded. Their capital could be more productively employed in their other agricultural and financial businesses.''

In seeking answers as to why Cargill expected the Continental purchase acquisition to contribute to its ability to compete effectively in a rapidly changing market environment the Iowa State study summarized that the acquisition will contribute to ''more effective knowledge acquisition and transfer from an expanded global presence and a broader base of grain origination facilities in the countries where grain is produced.

''The grain merchandising system is a high fixed cost system. Cargill hopes to compete more effectively and keep a large share of the Continental volume, capturing economies of scale by running more volume through without equivalent changes in the costs of managing their system. Further, Cargill expects that it will be more able to take costs out of the system, not just through fewer people, but by dedicating some facilities to specialized products and getting more efficiencies in operations (shorter barge turnaround times, longer runs in elevator handling, etc.).

Hayenga and Wisner point out that Cargill's new joint venture with Monsanto to arrange production and to market value-added specialty grains and oilseeds for the feed and processing industries ''will require greater capacity to handle segregated grain flows throughout the domestic and export marketing system. Continental has had a significant presence in the identity preserved grain market, with half its international feed customers converted to high oil corn.

''Cargill expects to better serve the producer by enhancing productivity and passing some of those cost savings on in the form of better prices to their suppliers and customers. They also plan offer many more price risk management alternatives and advice, financing, etc., to farmers,'' they add.

The study goes no to add that ''the basic concern expressed by some farmers, politicians, and industry participants is that Cargill bought Continental to remove a significant competitor, particularly in the export market, and expand merchandising margins. The ability to 'control' more facilities and larger volumes of grain and soybeans might adversely influence competition and the transparency and effectiveness of the price discovery process in the grain marketing system.''

The two professors then ask a series of key questions: Will the merger result other merchandisers and processors having to conform to Cargill standards in grain merchandising? Will the merger result in exclusivity in marketing arrangements with Cargill such that firms that do business with Cargill are excluded from or penalized for doing business with other merchandisers? Will Cargill bundle products or terms into their merchandising arrangements, like requiring its buyers and suppliers to use Cargill transportation or Cargill risk management tools? Will Cargill control so much grain at various stages of the system that fewer negotiated prices and price reports are available to keep the price discovery system transparent?

It is these questions that many farm critics feel that the Department of Justice's ''Final Judgment'' fails to answer.

''Captive Draw Areas'' and the HHI

Although Cargill and Continental have from the outset sought to minimize the monopoly situation the purchase would have created within the grain trade the facts are that farmers typically sell their crops to rural grain elevator operators, many of which are owned by cooperatives and small companies. These elevators then either export the grain or resell it to flour mills and other food processors with much of it being sold to grain trading corporations such as Cargill, Continental and Archer Daniels Midland (ADM) and it is these companies that own and operate the larger grain elevators, rail links, terminals, barges and ships needed to move grain around the country and the world.

The role of the grain trade in a nation that is constantly touted as being ''the world's breadbastket'' cannot be over emphasized as the respected University of Missouri rural sociologist William Heffernan points out, 75% of the world's food (based on dry weight) is grain based.

In discussing the nation's grain network the DofJ in its ''Complaint'' notes that in each instance, the geographic area from which a country elevator, river elevator, rail terminal, or port elevator receives grain is limited by transportation costs and is known as the ''draw area'' for that facility. Draw areas they conclude, expand and contract only slightly in response to normal economic fluctuations in crop supply, crop demand, and transportation costs.

For many country elevators, river elevators, railroad terminals, and port elevators, draw are Cargill and Continental often operate facilities that have overlapping draw areas, and they therefore compete with one another for the purchase of wheat, corn, and soybeans from the same producers or other suppliers. In some areas within these overlapping draw areas, Cargill and Continental have been two of a small number of competing grain trading companies.

''Sometimes they are the best,'' DofJ observes, ''and occasionally the only realistic alternative purchasers of grain from producers and other suppliers. By acquiring Continental's facilities that purchase grain from these 'captive draw areas,' Cargill would be in a position unilaterally, or in coordinated interaction with the few remaining competitors, to depress prices paid to producers and other suppliers because transportation costs would preclude them from selling to purchasers outside the captive draw areas in sufficient quantities to prevent the price decrease.''

By way of evaluating concentration is these ''captive draw areas'' the Department of Justice uses a criteria based on the Herfindahl-Hirschman Index (HHI), a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers.

For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 (302 + 302 + 202 + 202 = 2,600). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity is size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 are considered to be highly concentrated. Transactions that

increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.

In their ''Complaint'' the DofJ vividly shows that even prior to the purchase agreement Cargill and Continental were two of a very small number of grain trading companies competing to purchase grain in four key ''captive draw area'' including: the Pacific Northwest port range, which include western Minnesota, eastern North Dakota, and northeastern South Dakota; the Central California port range, which include the areas around Stockton, California, to West Sacramento, California; elevators in the Texas Gulf port range, which include portions of Texas and Louisiana; elevators along the Illinois river stretching from Morris, Illinois, to Chicago, Illinois, and on the Mississippi river in the vicinities of Dubuque, Iowa, and New Madrid/Caruthersville, Missouri, and the captive draw areas for rail terminals in the vicinities of Salina, Kansas, and Troy, Ohio.

Each of those ''captive draw areas'' is already highly concentrated based on HHI figures. The potential combination of Cargill and Continental would have dramatically and substantially increased concentration in already highly concentrated grain purchasing markets.

For example, in the Pacific Northwest port range markets for corn and soybean purchases are highly concentrated, with the top four port elevator operators accounting for 100% of all corn and soybean purchases in these markets as Cargill alone accounts for about 44% of all soybean purchases and 23% of all corn purchases. Continental, in a joint venture with Cenex Harvest States, accounts for about 50% of all soybean purchases and 30% of all corn purchases in the same port range.

After the proposed acquisition, Cargill would have accounted for 94% of Pacific Northwest soybean purchases and about 53% of Pacific Northwest corn purchases. The approximate post-merger HHIs for purchases of soybeans and corn in the Pacific Northwest port range would be about 8868 and 5004, with increases in the HHIs of 4400 and 1364 points, respectively, resulting from this transaction.

Likewise, the Central California port range market for wheat is highly concentrated, with Cargill and Continental accounting for virtually all wheat purchases in this market. The approximate post-merger HHI for purchases of wheat in the Central California port range would be about 10,000, with an increase in the HHI of 7,888 points resulting from this transaction.

In the Texas Gulf port range markets for soybeans and wheat are also highly concentrated, with the top three purchasers accounting for 100% of all purchases of soybeans and the top four purchasers accounting for 79% of all purchases of wheat in these markets. Cargill accounts for about 16% of all soybean purchases and 25% of all wheat purchases in the Texas Gulf port range. Continental accounts for about 33% of all soybean purchases and 9% of all wheat purchases in the same port range.

After the proposed acquisition, Cargill would have accounted for about 49% of Texas Gulf soybean purchases and about 34% of Texas Gulf wheat purchases. The approximate post-merger HHIs for purchases of soybeans and wheat in the Texas Gulf port range would be 5105 and 2611, with increases in the HHIs of 1056 and 451 points, respectively, resulting from this transaction.

Other geographic markets in which Cargill and Continental compete for purchase of corn, soybeans, and wheat are also highly concentrated. These markets include river elevator markets on the Illinois River and the Mississippi River, authorized delivery points on the Illinois River for corn and soybean futures contracts, and rail terminal markets in Kansas and Ohio. The proposed transaction would have increased the HHIs in each of these markets to over 3,000.

Divestiture: Trade Collusion by Any Other Name?

In its ''Final Judgment'' the Department of Justice not only directs Cargill to divest all of its property rights in the port of Seattle elevator, East Dubuque and Morris river elevator, but also mandates that Continental is ordered and directed to divest all of its property rights in the Lockport and Caruthersville river elevators, the Salina rail and Troy rail elevators, the Beaumont, Stockton and Chicago port elevator to an Acquirer acceptable to the United States in its sole discretion.

When one totals the elevator capacities of those facilities that Cargill must relinquish and those Continental elevators which it is prohibited from operating some rather curious figures emerge.

The total domestic storage capacity for Cargill and Continental in January of 1999 was 463 million bushels for Cargill and 169 million bushels for Continental. This compares to 1981 figures of 148 million bushels for Cargill and 110 million bushels for Continental. The total capacity of the Seattle port and Morris River elevators and one third of the Havana river elevator (see below) is some five million bushels while the storage capacity of the Lockport, Caruthersville, Salina and Troy rail elevators and the Beaumont and Stockton port elevators totals some 15 million bushels. If hypothetically one independent corporation should buy all these elevators its combined storage capacity would be but between three and four percent of Cargill's storage capacity and a similar percentage of ADM's total storage capacity.

The DofJ directs that Cargill and Continental's assets shall be made to an Acquirer for whom it is demonstrated to the sole satisfaction of the United States that: (1) the purchase is for the purpose of using the Asset to compete effectively in the grain business, (2) the Acquirer has the managerial, operational, and financial capability to use the Asset to compete effectively in the grain business; and (3) none of the terms of any agreement between the Acquirer and defendant(s) give defendant(s) the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability or incentive of the Acquirer to compete effectively.

Among the other terms of the ''Final Judgment'' Cargill shall not purchase, lease or acquire any interest in the Lockport river elevator, Caruthersville river elevator, Salina rail elevator, Troy rail elevator, Beaumont port elevator, Stockton port elevator or Chicago port elevator, or any interest in the river elevator at or near Birds Point, Missouri (in which Continental formerly owned a minority interest, and had a right of first refusal to purchase grain).

Cargill was also directed to enter into a throughput agreement that makes one-third ⅓ of the daily loading capacity at its river elevator located at or near Havana, Illinois, or one barge-load per day, whichever is greater, to an independent grain company acceptable to the United States in its sole discretion (the ''Havana Throughput Agreement''). Daily loading capacity shall be the capacity registered with the CBOT.

A ''Standard Throughput Agreement'' means an agreement that allows one grain company to move its grain through an elevator operated by another person, with unloading, storage, loading and ancillary services provided by the operator pursuant to terms, conditions and rates that are common in the grain industry.

The independent grain company that obtains the throughput right from Cargill (the ''third party'') must be qualified under CBOT rules and regulations to make delivery of at least one barge-load of corn and soybeans per day for the settlement of CBOT corn and soybean futures contracts, and must agree to register that capacity at the Havana facility with the CBOT.

The ''Havana Throughput Agreement'' shall allow the third party to use its share of the loading capacity at the Havana facility to transload grain from trucks onto barges for commercial purposes unrelated to futures contract deliveries, as well as to make deliveries under CBOT futures contracts. Cargill, however, is not obligated by the ''Final Judgment'' to provide storage services to the third party in excess of the storage services required to accommodate the transloading of grain shipments from trucks to barges. Load to barge loading, may not exceed the load-out fees.

Cargill: Getting the ''86'' in Seattle?

In the Department of Justice's original ''Complaint,'' the anti-trust division asserted that competition for the purchase of grain and soybeans from farmers and other suppliers would have been harmed by combining Cargill's and Continental's competing port elevators in the Pacific Northwest, which purchase corn and soybeans from farmers in portions of Minnesota, North Dakota, and South Dakota. Currently, nearly 40% of Cargill's corn shipments abroad go through their Pier 86 elevator in Seattle.

Yet, in ordering the divestiture of Cargill's 4.2 million bushel terminal in Seattle, presently leased from the Port of Seattle, the nation's largest private corporation will now operate in part the TEMCO three million bushel grain elevator at the nearby Port of Tacoma. TEMCO or Tacoma Export Marketing Corp. has operated the terminal as a joint venture for Continental and Cenex

Harvest States Co-op, now in the process of merging with Farmland Industries, to form United Country Brands, the nation's largest agricultural cooperative. (See Issue #25)

Slightly over 100 miles to the south of Tacoma, Mitsubishi Corp. a leading Japanese trading company, recently announced it has acquired about a 10% stake in the Kalama Export Company LLC equally owned by ConAgra Inc. and Archer Daniels Midland Co. (''Supermarkup to the World''). Kalama Export Company LLC operates a grain elevator along the Columbia River in Washington State, with hourly shipping capacity of around 3,000 tons and storage capacity of about 50,000 tons. It also plans to increase storage capacity to 90,000 tons by the end of 2000.

Yet Cargill spokeswoman Lori Johnson said the Justice Department was concerned that her company would have too much business concentrated in the Pacific Northwest because of Continental's leasing of the Tacoma grain-storage facility. ''We fought the Justice Department; not to include Seattle,'' said Johnson. ''We still need to sit down with Port officials and talk about the options and make it work for everyone,'' she said. ''But we do have an obligation under the lease.''

According to the DofJ's divestiture order the Seattle port elevator may enter into a Standard Throughput Agreement with Cargill, or any joint venture involving the Tacoma elevator to which Cargill is a party (the ''Cargill Joint Venture''), provided that: (1) The Acquirer has no interest in Cargill or the ''Cargill Joint Venture''; (2) the throughput agreement gives Cargill or the ''Joint Venture'' no more rights concerning the operations of the facility than are commonly granted to sublessees in Standard Throughput Agreements; and (3) Cargill or the ''Cargill Joint Venture'' obtains continuing rights to move no more than 8.5 million bushels of grain and oilseeds combined in any given month through the Seattle port elevator.

''Moreover,'' the Justice Department states, ''the United States must be satisfied, in its sole discretion, that any Standard Throughput Agreement that may be negotiated between Cargill or the 'Cargill Joint Venture' and the Acquirer of the Seattle port elevator: (1) Would leave the Acquirer with sufficient capacity for it to be a viable and effective competitor for the purchase of corn and soybeans in the Pacific Northwest draw area; and (2) would not adversely affect the Acquirer's ability or incentives to compete vigorously for the origination of corn and soybeans in the Pacific Northwest draw area, by raising the Acquirer's costs, lowering its efficiency, or otherwise interfering in the ability or incentive of the Acquirer to compete effectively.''

The DofJ notes, however, that Cargill need not divest the Seattle port elevator if it does not buy, lease or otherwise acquire an interest in Continental's port elevator at or near Tacoma, Washington.

If another firm, however, acquires the Tacoma port elevator pursuant to a right of first refusal (and Cargill retains the Seattle port elevator), Cargill shall not subsequently purchase or lease the Tacoma port elevator. If another firm acquires the Tacoma port elevator pursuant to a right of first refusal, Cargill shall not subsequently acquire any other interest in that facility (including a joint venture interest) without the written consent of the United States.

As for the Seattle elevator, the *Seattle Times* business correspondent Patrick Harrington recently reported, ''with Cargill now planning to shift operations to Tacoma after all, it remains to be seen whether there is a player big enough to fill its shoes.''

''Cargill, even before it acquired Continental last month, was the nation's largest exporter of grain; Continental was the second largest. Illinois-based Archer Daniels Midland, another large grain company, had earlier expressed interest in the facility, according to Port of Seattle officials, but spokesmen for the company refused to comment.''

Banking on the Futures

The issues of concentration in the grain trade, even prior to the Continental purchase by Cargill was promising to become a major issue in the year 2000, when new delivery terms take effect for the Chicago Board of Trade's (CBOT) corn and soybean futures contracts as Toledo, Ohio, will cease being a delivery point for the CBOT contracts, and delivery points will instead be clustered up and down the Illinois River where a large portion of grain facilities, on the northern portion of that river, are owned by Cargill or Continental, and likely will be combined.

In its ''Complaint'' the DofJ stresses that by consolidating the Cargill and Continental river elevators on the Illinois River, their proposed transaction would concentrate approximately 80% of the authorized delivery capacity for settlement of Chicago Board of Trade corn and soybean futures contracts in two firms. ''This concentration,'' they emphasize, ''would increase the likelihood of price manipulation of futures contracts by those firms, resulting in higher risks for buyers and sellers of futures contracts.''

For farmers like Floyd Schultz who currently transports his grain by truck just four miles to Lockport, Illinois where he can choose between Cargill and Continental grain terminals, sitting side by along a canal leading to the Illinois River, the proposed merger of the two grain companies will leave the nearest competitor an Archer Daniels Midland terminal 30 miles and another 10 cents a bushel in shipping costs away. While Cargill could lower its prices and improve its margins, he notes, ''we as farmers would be the ones who pay.''

In Marvin Hayenga and Robert Wisner's 1998 study, ''Cargill's Acquisition of Continental Grain's Grain Merchandising Business,'' (see above), the authors obvious area of concern at that time was the northern section of the Illinois River. They noted at the time that even if the Continental sale to Cargill was approved, ADM will remain the largest firm on the river, controlling 36% of storage space.

Faced with such a situation Sid Love, analyst with Joe Kropf & Sid Love Consulting Services in Overland Park, Kansas, told the *Wall Street Journal* that he regrets the possible departure of Continental from the grain market. ''My concern is deliveries on the Illinois River,'' Love said. ''Now, you'll basically have two big companies, and if they're both bullish, you won't have any deliveries,'' since they could export the grain rather than meet contract obligations.

Reacting to the initial announcement of the purchase one Illinois farmer also speculated that if Continental was unable to successfully compete financially with other grain trading companies to the extent that it was willing to sell its assets to a competitor why would anyone believe that an independent elevator operator could achieve success in such a concentrated market?

''Throughput Arrangements'' High Costs Discourage Competition

The Department of Justice's willingness to use ''throughput agreements'' as part of its Cargill/Continental divestiture order has received sharp criticism from Dan McGuire, a member of the American Corn Growers Association and the Nebraska Farmers Union.

''Our department,'' he said, ''will take a close look at this proposed merger. It is our job to further competition in private business and industry, and if we allow Samson and Delilah to merge we may be doing the consumer a disservice.''

The chairman of Samson protested vigorously that merging with Delilah would not stifle competition, but would help it. ''The public will be the true beneficiary of this merger,'' he said. ''The larger we are, the more services we can perform, and the lower prices we can charge.''

The president of Delilah backed him up. ''In the Communist system the people don't have a choice. They must buy from the state. In our capitalistic society the people can buy from either the Samson or the Delilah Company.''

''But if you merge, '' someone pointed out, ''there will be only one company left in the United States.''

''Exactly,'' said the president of Delilah. ''Thank God for the free enterprise system.''

The Anti-Trust Division of the Justice Department studied the merger for months. Finally the Attorney General made this ruling. ''While we find drawbacks to only one company being left in the United States, we feel the advantages to the public far outweigh the disadvantages.''

''Therefore, we're making an exception in this case and allowing Samson and Delilah to merge.''

''I would like to announce that the Samson and Delilah Company is now negotiating at the White House with the President to buy the United States. The Justice Department will naturally study this merger to see if it violates any of our strong anti-trust laws.''
August 30, 1999.

Department of Justice, Antitrust Division, San Francisco Office.

From: Riley Lewis (Forest City, Iowa)
Sent: Wednesday, June 23, 1999 6:52 AM
To: WEB JPR
Subject: Cargill-Continental Merger

As your dept. dwells on the merger-acquisition of Continental Grain by Cargill I would like to comment as a 5th Generation Iowa farmer on the merits. I am against it—

farming for thirty years I've seen this many times in smaller amounts of suppliers to agriculture. When you have dealerships-coops etc that are of the larger scope I find the less competition tends to maker service less and more expensive with a take it or leave it attitude. Grain bids are our income and competition just as we sell hogs to three packers makes better bids. In a small town nearby there where two aggressive shoe stores five years ago—people come from big cities to buy brand name shoes at competitive bids—then one year the owner of one store died with no heirs and the store closed. The other raised his bids for shoes and within two years he went out of business as business went to a larger town. Great example of what competition does and here as your good producer we need competition—not mergers!

Thank you.

Riley Lewis.

October 11, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

FAX: 202/307–2784

Dear Mr. Fones: I am writing to request that you conduct further investigation of the Cargill-Continental Grain sales and that you extend the comment deadline for another sixty days.

Are you aware of what the creation of a larger monopoly will do, not only to grain farmers in this county, but also to all consumers?

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate, Across the U.S. farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting to final judgment on this.

Please give my request your serious consideration.

Sincerely,

Todd Lewis.

September 21, 1999.
Roger W. Fones,

Chief of Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh St. NW, Suite 500, Washington, D.C. 20530.

Dear Mr. Fones: Please stop the Cargill Continental Merger. Cargill is so big already. They are in the seed, banking, fertilizer, chemical business. They manipulate the markets for cheap grain. They are in the feeding business. They own packing plants. What happened to our Anti-trust to stop all this. It is ruining the township and county rural life. They do not do business locally.

They are giving mega bucks to the University of Minnesota to have the do research that they will own. They have the biggest lobbying effort in Washington DC.

They only way rural life can fight this big giant is through political action. We have let it go to far. Look what happened in Russia when the food supply wasn't done individually. Look at Roosevelts monument and DC and read the words. It will help you understand why the Cargill-Continental merger can go on.

I request you stop all mergers including the co-ops. They are big business and have forgotten about the patrons who built them.

Rick Lundebrek,

Township Officer, Benson, Minnesota 56215.

First Security Bank

September 21, 1999.
Roger W. Fones,

Chief of Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh St. NW, Suite 500, Washington, DC 20530.

Dear Mr. Fones: How can you let Cargill and Continental Merger. The marketing is so concentrated already. Cargill is dominating the full chain: Seed, fertilizer, chemical, banking, end process, meat industry, meat packing. This is ANTI-TRUST. Please stop it now.

Sincerely,

Vice President,

First Security Bank, 215 13th St. So. Benson, Minnesota 56215.

The family farmer is who I work with. They can't believe this has happened in America. They look at Cargill like a sleeping giant.

September 24, 1999.
Judge Gladys Kessler,

U.S. District Court for the District of Columbia, 333 Constitution Ave. N.W., Washington, D.C. 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: Presently before you awaiting your approval is a ''Final Judgment'' filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

Legal precedent, according to the Department of Justice, requires that ''the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' ''

In its July 8, 1999 ''Final Judgment'' we believe the Department of Justice has ''breached its duty to the public in consenting to the decree'' and that its ''Final Judgment'' is not ''within the reaches of the public interest.''

As the Department of Justice's own ''Complaint'' states, the Cargill purchase would ''substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies purchasing corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices.''

Using the Department of Justice's own figures and criteria, we see in its ''Complaint'' that even before this announced purchase the U.S. grain trade was already dominated, if not monopolized, by Cargill. Nothing in the Department of Justice's ''Final Judgment'' addresses itself to that issue.

The Department of Justice must consider more than the grain-buying operations of Cargill. Acquisition of Continental's seventy elevators will enhance the economic power of Cargill. This concerns farmers, because Cargill stands out as a top-four firm in beef and pork packing, cattle feedlots (where Continental is the largest), broiler and turkey production, animal-feed plants, grain-elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. This dominant position across wide-ranging agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions prevailing at a given time.

The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Farmers are forced into bankruptcy after a few bad seasons, but Cargill will maintain its dominant status over time, regardless of economic performance over the short term. With Continental's assets, Cargill will become an even more powerful firm, even more capable of strategic, cooperative, and anti-competitive behavior.

In the name of economic and social justice and the preservation of the family-farm system of agriculture in the United States, we urge you to recommend that the Department of Justice withdraw its ''Final Judgment,'' study in far greater detail this ill-advised sale, and carefully consider the grave anti-trust issues it presents with dire consequences to both producers and consumers of our food supply.

Sincerely,

Muriel Marvin,

Lawrence Marvin,

Placerville, CA 95667.

Dear Attorney General Reno: I am writing to you to express my deep concern with the giant agriculturer marketer Cargill and its' agriculture anti-trust actions when it concerns small farmers in this nation. There should be an immediate investigation to see if Cargill is violating anti-trust laws.

Thanks for your time.

Sincerely,

Jerome McCollom,

Department of Justice, August 30, 1999, Antitrust Division, San Francisco Office.

Alta Vista, KS 66834
October 8, 1999.
Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530, FAX: 202–307–2784.

Dear Mr. Fones: Please do not approve corporate mergers and buyouts such as Cargill with Continental Grain or Smithfield Foods with Murphy Farms and Tyson Food's Pork Group. I believe such mergers and buyouts serve to weaken American national security by forcing reliance upon foreign markets rather than promoting a sound domestic agriculture production and delivery system.

While capitalism favors competition, such mergers and buyouts represent the same command and control favored by communism. Totalitarian food production and delivery systems have failed in all nations where they were the dominant system. Why would Americans believe such a system could work here? We use food and medicine as a political tool with nations reliant on imports. Do we truly wish to open our own country to similar political leveraging?

The merging of Cargill and Continental Grain will not favorably improve grain prices for farm producers. As farm stability weakens, so does it's surrounding community. As communities lose their economic base, they lose their ability to adapt to fluctuations of market, economy and social unrest.

Through the past decades, we have seen a reduction in the number of industry competitors of steel, auto and textile manufacturing as well as food and fiber production. The reduction to a few industry giants has given the impression of reduced consumer prices and strong economy. However, such mega-corporations are not flexible. Labor problems, interest rates, consumer choice, environmental impact, and many other factors can result in massive employee lay-offs, plant closings, unmanageable pollutants, labor strikes, unstable housing, overburdening of community services and other negative impacts that are too great for the community to effectively handle.

I believe in world trade, competitive trade with choice and options rather than singular avenues. I support the government use of anti-trust laws when corporate mergers and takeovers threaten the competitive edge of all America for the sake of exorbitant short-term gain for relatively few beneficiaries. Thank you for your consideration.

Sincerely,

Carissa McKenzie

Westminster College

501 Westminster Avenue, Fulton, Missouri 65251–1299, 314 642–3361

October 1, 1999.
Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division—U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington DC 20530.

Dear Mr. Fones: Antitrust legislation is in place to protect consumers and competitors against a company dominating the market and taking unfair advantage. For that reason, I object to the Cargill purchase of Continental's grain operations. This purchase would move Cargill from the category of dominator to the category of terminator of everyone else.

When I hear that the Cargill/Continental sale is in your hands, I hope that you will consider the impact on rural communities of this merger. I have had the chance to see these big players operate firsthand. I live across the road from a Cargill hog operation. The arrogance of these corporate fellows is astonishing. Making these guys more powerful would be another nail in the coffin for diverse rural communities like mine.

When independent operators are put out of business by big operators, as has happened in my community, everybody suffers. The markets have already gotten so concentrated that an out-of-favor producer can be cut off from being able to make a living. The big operators create environmental disasters that are impossible to regulate. When regulators get involved, they are ignored or tied up in court.

Consumers are hurt by this concentration, too. Consumers suffer from price-fixing and from lack of choice in the marketplace.

National policy has made corporations more powerful, and this needs to stop. These big operations do not treat producers like independent businessman. Instead, they are paid as little as possible while keeping as much as possible in the corporation. This hurts us all.

Please do all you can to stop this merger.

Sincerely,

Margot Ford McMillen

Sept. 27, 1999.

I am very much opposed to the Cargill-continental merger. Can't anyone see what is happening? Going big is not better—look what is happening to our schools, our little towns etc.—look at our grain prices now—the farms are all getting *too* big—soon there will be only a few farms left in each county—please use some *common* sense in this situation!

Darlene Milbreadt,

Echo, MN 56237.

September 28, 1999.

Mr. Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street N.W., Suite 500, Washington, D.C. 20530.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Mr. Fones: I am writing to express my opposition to Cargill Inc. purchasing the grain division of Continental Grain Co. I will leave the technical analysis to those qualified to do so and mainly focus on the human element involved. I want you to know how this will affect me and my community and hundreds of thousands like myself and their communities across this country.

I am a farmer from Northeast Missouri. I wish I could tell you that the proposed acquisition would leave me with one fewer choice when it came time to market the grain I raise. I can not make that claim as there is no Continental elevator in my area. I wish there were because then my choices of elevators would almost be double what they now are. I say almost because I have one soybean processor (ADM) who normally pays 7–10 cents more that their competitor (?), Bunge, who does not process soybeans at their location. It is reversed for corn and wheat as Bunge outbids ADM by substantial margins on these two crops 90% of the time. Thus you can see why I would welcome another elevator, regardless of who owns it.

Following are some of my reasons for opposing the merger:

1. This area of northeast Missouri, west central Illinois, and southeast Iowa are all part of a captive draw area for ADM in regards to soybean purchases. As recently as 10 years ago this tri-state area had no less than 4 competitive bidders for soybeans. Two processors, ADM and Quincy Soybean Co., and two river terminals, MFA Incorporated and Bunge. All of the soybeans purchased at the small country elevators eventually ended up being sold to one of these 4 purchasers. Within the last 10 years ADM has purchased Quincy Soybean Co. and Bunge has bought out MFA Inc.'s river terminal. That leaves the area where we are today with ADM and a non-competitive Bunge. I know first hand what a lack of competition means when it is time to sell my crops.

2. I use the Chicago Board of Trade to hedge my grain. I do not pretend to be an expert on the operation of the board but it concerns me when one firm will control 80% of the delivery points for futures settlement. I have read that this could lead to manipulation of futures contracts.

3. The United States agricultural community has been caught up in a frenzy of mergers and buyouts. This may be the weakest argument to make legally, but it is the strongest from the human element standpoint. This merger, like most of those before, is really a double edged sword. One side of the blade cuts out the inefficiencies of smaller entities when they increase economic size. The other edge cuts the fabric of Rural America. Each business we lose, be it a elevator, seed company or machinery manufacturer lessens competition among those who we do business with. This lessening of competition drives up cost which in turn drives producers from business.

It is extremely difficult for anyone not in the rural areas of the Midwest to fully understand rural infrastructure. I live near a town with a population of 2700. This size community, like thousands across this country, depends upon farmers and ranchers to provide a large portion of the fuel for their economic engines. Consolidation is killing rural America. Will stopping this merger or any other single acquisition reverse this

trend? No—but it will be a start to the revitalization of the rural areas of this country. Without a healthy rural area our country can not be whole. It is time for someone in a position of authority to step up and draw a line on this insanity. I hope this message reaches someone who has the courage and insight to do just that.

Sincerely,

Keith G. Mudd

Roger W. Fones,
Antitrust Division, U.S. Department of Justice, 325 7th St. NW, Suite 550 Washington, D.C. 20530.

October 9, 1999.

Dear Sir: Please consider this letter regarding the Cargill Continental merger very carefully.

Cargill, a company from my state of Minnesota, has been ruthless in dealing with farmers and small businesses. They practice buying the narrow point in the pipeline and using that position to control and dominate the industry.

I have personally experienced this when I sold three ship loads of corn to the Egyptian feed millers in 1995. The corn was to be loaded to Egyptian ships at the port of Duluth. Cargill would not load it and the deal fell through. The same scenario happened at the Port of New Orleans to the N.F.O.

This summer Cargill was bidding 20 cents above Chicago for corn delivered by rail to Duluth, however Cargill had booked all the rail cars so independent elevators could not take advantage at that price. Truck bid for the same commodity was 20 cents under Chicago. Thus *Market Domination.*

This merger would give Cargill control of most of the major ports and loading facilities on the U.S. and thus control of the movement of grain and other commodities in the U.S.

It is not wise or in the best national interest to allow one company to control this much of the food supply of the United States of America.

Sincerely,

Winton Nelson,
Darwin, MS 55243, 320–693–7966.

September 21, 1999.

Roger W. Fones,
Chief, of Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh St. NW, Suite 500, Washington, D.C. 20530.

Dear Mr. Fones: Please stop all these big corporate mergers. This is to stop the Cargill-Continental Merger as well as all large Ag corporate Mergers. Last winter in Texas in one county alone Cargill was feeding 83,000 head of beef feeders. Two miles away Continental was feeding 83,000 head. This has got to stop. They purchased alot of these cattle cheap from the drought in Texas and so forth. They purchased all the cheap feed manipulated by their marketing. Look into it yourself as they made mega bucks on the meat division. All this is ruining the family farmers. This is also ruining rural areas. Farmers spend their money locally. Cargill is in the seed, fertilizer, banking, chemical business. They do not support local areas at all. Farmers that are desperate to keep farming farm land all over for them. This does not help local areas. We need a stop on all mergers now.

They do not support local schools, or rural infrastructure. Do you want Cargill to get even bigger. They are farming land down in South America and paying the locals $250.00 per month. They are glad to farm down there because there is no infrastructure there. Do we want this to continue.

The grain marketing now is so concentrated. They are in the livestock business as well. They own the packing plants. Please look into these problems. They concentrate animals in large numbers. Look at the livestock in the large hog operations in North Carolina. We are going to pay for all this concentration.

Rural Areas need help from people like you. We need to have the anti-trust laws enforced. When Cargill Owns the Food Policy we will PAY.

Sincerely,

David Olson

Lei 'Ohu Farm

46–3615 Kahana Drive, Ahualoa, Honokaa, Hawaii, Phone: (808) 775–9473

FAX TO: Mr. Roger W. Fones, (202) 307–2784
FAX FROM: Glenn Oshiro
FAX #: (808) 775–9473
DATE: October 11, 1999
Re: Cargill, etc.

Please extend the period for public input on the Cargill Continental Grain matter. This is the first day I've heard of your deliberations, and I consider myself to be well informed. My business calls for me to be in touch with small farmers and ranchers. As you can imagine, this is ongoing and intensive being that there are few consistent means to reach the small producer, e.g. there are few, if any, umbrellas that cover small farmers and ranchers. Much of what I do to attract the attention of my clients is word of mouth, one on one.

While I'm not suggesting that you solicit responses from small producers individually, more time is necessary for word of the public comment period to reach small producers.

I am a farmer, business person, and stockholder.

Glenn S. Oshiro,
Buy from the Farmer.

September 18, 1999.
Judge Gladys Kessler,
U.S. District Court for the District of Columbia, 333 Constitution Ave., N.W., Washington, D.C. 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: After reading that the Department of Justice itself has admitted that the Cargill purchase of the Continental grain division would ''substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers,'' I can only urge you to put a stop to it. This purchase is not in the public interest.

More and more lately I read in the business news about mergers between already massive corporations.

More and more I hear about how desperate farmers across America are again being squeezed between high costs they pay to raise animals and grow crops and low prices they're being offered for their livestock and produce.

Here in rural Mendocino and Sonoma counties, in Northern California, beautiful old apple and pear orchards are being bought from family farmers and then razed at a frantic price by investment corporations anxious to plant vineyards, the money-making crop of the moment. Other local ag producers and ranchers are finding the costs of farming and raising livestock too high to resist the pressure to sell off their land for vineyard conversions or rural residential subdivisions.

It is our government's duty to prevent any more mergers that further increase the costs to American family farmers. America needs to grow its own food. Putting agriculture in the hands of international corporations instead of the family farmers—as seems to be happening more and more rapidly—is a social and environmental disaster.

Thank you.

Jennifer Poole,
Willits, CA 95490, Mendocino County.

Mon., Oct. 11, 1999.
From: ''Mike Callicrate'' <mike@nobull.net>
To: <Undisclosed-Recipient:@secure06.levon.net;>
Date: Mon., Oct. 11, 1999, 12:22 PM
Subject: [HeartbeatUSA] last day for comment on Continental-Cargill merger

Consumers, family farmers, small-town business owners: Today, October 11, is your last chance for public comment on the creation of the world's largest food monopoly. It is the merger of Cargill and Continental Grain. Its effect will be to raise consumer prices and reduce the earnings of already-hurting family farmers and small businessmen. Monopolies always hurt the consumer by destroying competition.

You may register your objections to the above deal simply by faxing the Chief of Transportation, Energy and Agriculture Section (Mr. Roger W. Fones) at the following Fax number: 202/307–2784.

Use a simple, brief message like the following:

''Please conduct a more thorough investigation into the Cargill/Continental Grain sale before submitting a Final Judgment on the matter. Please extend the public comment period for another sixty days.''

Public comment period officially closes tomorrow. Fax your message today.

verell@rahab.net

As states above.

Rae Powell

Amanda Bray

October 9, 1999.
Roger W. Fones,
Chief of Transportation, Energy and Agriculture, Anti Trust Division, U.S.

Department of Justice.

Dr. Fones: I urge you to Conduct a more Complete investigation into the sale of Cargill-Continental Grain, before submitting a final judgment.

Farm income in the United States is down by 70%.

Depressed prices are running farmers and small town business people.

Please delay the Comments deadline for another 60 days.

I appreciate your consideration.

Sincerely,

N. Ramsey,

Mesquite, TN 75150.

September 22, 1999.

Dear Mr. Roger Fones: The merger of Cargill & Continental Grain Co. Is a major concern of ours. This merger will take away our market freedom. Already we are hurting because to few people control our markets and tell us what they will give us and we have to take it.

I always believed the anti-trust laws were to protect the little man but it seems like no one abides by them any more and they just find ways to go around them. We know that it is not fair! Cargill is already one of the top 4 firms in beef, pork, turkey, chicken, corn, soybean and production in merger would just make these more powerful.

Thank you for reading this,

Mrs. Jan Richardson

A copy has also been sent to Attorney General Ken Salazor.

September 18, 1999.
Judge Gladys Kessler,
U.S. District Court for the District of Columbia, 333 Constitution Ave. N.W., Washington, D.C. 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: Presently before you awaiting your approval is a ''Final Judgment'' filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States I urge you to recommend that the Department of Justice withdraw its ''Final Judgment'', study in far greater detail this ill-advised sale and carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Sincerely,

Howard H. Sargent,

Consumer, Boulder, CO 80303.

Central City, NE 68826
Sept. 26, 1999.
Department of Justice,
United States Government, Washington, D.C. 20510.

ATTN: Dept. for Comments on proposed Cargill-Continental merger

Dear Sirs: I am writing to voice my concern on the proposed Cargill buyout of Continental Grain Co. I would ask you to please disapprove this merger on the grounds that with the merger-mania of the past 20 years, the agricultural industry has become so concentrated that there is no free market.

Both the meat-packing plants and grain companies have gained a dangerous stranglehold on U.S. food production and prices. Shouldn't our anti-trust laws protect the people from such monopolies?

Eventually, even our farmer co-ops will have little influence in agriculture when they are up against such giants.

It is probable that thousands of family farmers will be going out of business this year—a tragedy for their families and for the nation. For the most part their only customers are the corporation giants which can name their own price—way below the cost of production, and the result of the over-concentration in the agricultural industry.

What safeguards are in place to make certain that food will continue to be affordable if family farms become a thing of the past?

Please use our anti-trust laws to protect all Americans.

Sincerely,

Lois Schank

Clyde Southern

Steele, MO 63877.

July 23, 1999.
The Honorable Judge Gladys Kessler,
U.S. District Court, District of Columbia, 333 Constitution Ave., NW, Washington, D.C. 20001.

Civil Action #991875 Filed 7–8–99.

Dear Judge Kessler: I write to you as a second-generation farmer located in the Missouri Bootheel area, along the Mississippi River at the juncture of Missouri, Arkansas and Tennessee. My family is primarily engaged in the production of soybeans, wheat, corn, and rice and we have experienced the great advantage of river barge transportation of our farm produce for many years. We like to think that we contribute to the prosperity of our nation by our involvement in international trade, not to mention our bountiful production that has alleviated hunger and starvation throughout the world.

The above civil action involves the Continental Grain Elevator which is located at Cottonwood Point (a historic ferry crossing), some ten miles south of our county seat at Caruthersville, and within a couple of miles of Arkansas. We have been privileged to sell grain to all of the grain elevators within this area, and conditions have always been amicable. In this flat alluvial valley, we can see many of the elevators along the river, and the Continental Storage Tanks are within sight of our farm.

I certainly agree with Joel Klein's statement in the Attorney General press release, which states ''This enforcement action demonstrates the Department's commitment to preserve competition in agriculture.'' Over the years I have seen significant improvement in competition along the river, and producers in other parts of the nation are envious of the prices we receive on the spot market and the ability to book a favorable basis at local elevators or at the Chicago Board of Trade. Now comes a point of jeopardy which we perceive exists in one small portion of the divestitures listed in the final judgment of the civil action claim filed under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

I respectfully refer to Page 2, of the Final Judgment (Definitions) Paragraph F, ''Caruthersville river elevator''. Although this elevator has a mailing address of Route 1, Caruthersville, MO 63830, it is known locally as the Cottonwood Point facility, which is located 10 miles south of Caruthersville, near the Arkansas border. The nearest town and postoffice is Cooter, Missouri, three miles west. A modern bridge crossing to Tennessee along Interstate 155, leads to other elevators (within sight of the Continental elevator at Cottonwood Point). We have no trepidation or fear of monopoly practices from Cargill, which has an elevator at New Madrid, Missouri 45 miles to the north. The present fear is that one of the largest members of the International Grain Cartels is interested in purchasing the Continental facility at Cottonwood Point. We learn that Bunge Grain Company may have entered into negotiations to purchase the Continental elevator, which would pose a definite lack of competition for local grain farmers in their choice of port outlets in the area. The proximity of current Bunge elevators in our area of operation could artificially depress the prices offered for our grain.

- Nearby—Bunge has an elevator at Caruthersville (10 miles), one at Huffman, Arkansas (8 miles), one at Booths Point (across the river in Tennessee at the Interstate Bridge—15 miles), and one at Heloise directly across the river in Tennessee within eyesight of Continental.
- If Bunge purchases Continental at Cottonwood Point, this would given them a total of seven elevators along the river within a fifty-mile distance.

It is common knowledge locally that other large grain trading facilities are interested in purchasing the Continental facility at Cottonwood Point. Cargill would probably provide trade opportunities without restraint of trade in the area, and of course we would be happy to see Continental remain at its current location and with the same ownership.

However, we would like to offer one caveat in regard to the selection or location of any grain-trading firm at the current Continental Cottonwood Point site. The owners and operator must be large enough to trade and offer strong competition in the International trading arena. It would likely be impossible for a small independent grain elevator to offer competitive prices to local producers if it did not have the ability to compete and trade in a worldwide arena of International trade.

During this critical time of agriculture stress, it is imperative that we continue to have strong competition and fair prices for producers in our area. Therefore, we strongly insist that Bunge Grain should not be allowed to purchase the Continental Grain facility at Cottonwood Point, thus creating a near monopoly situation which would invalidate the current anti-trust action.

Sincerely,

Clyde Southern

October 12, 1999.
Mr. Tom Miller,
Iowa State Attorney General, Hoover State Office Building, Des Moines, Iowa.

Re: Cargil-Continental Grain Merger

Dear Mr. Miller: As a graduate of one of the finest Universities in the middlewest, Iowa State at Ames, with a major in soils and a minor in Agricultural Economics, I strongly urge you to vote NO for this merger. This merger will dictate less market choices for farmers, large and small alike. Today, a bushels of corn, (56 pounds of beautiful raw protein) will not buy a cheap hamburger in many restaurants. This merger, IF APPROVED, will lower the farmer's share of the retail market even still more.

Following my senior year at Iowa State, I took advantage of the long established ISU Ag. travel trip. It was a 10,000 mile accredited trip visiting areas in Detroit, Washington, D.C., Gainsville, Austin, and Denver. With four major stops per day, we studied crops, soils, and we also visited with farmers and ranchers along the way. One very interesting stop was along the lake area in Michigan where a overseas grain buyer/shipper was located by the name of Spencer. (No relation to me). I would like to see our government encourage the escalation of these small shippers. This would increase competition and help the family farmer win a fairer share of the consumer's food dollar. Please vote no for the merger of giant self serving corporations like Cargil and Continental.

Sincerely,

Lyle D. Spencer,
Goldfield, Iowa.

Blooming Prairie, MN 55917
September 28, 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh St. NW Suite 500, Washington, DC 20530.

Dear Sir: The merger of Cargill and Continental Grain Co. is a major concern to the American farmer. This would increase Cargill's monopoly of the grain trade. Why should Cargill be any different than other big monopolies? Isn't this what anti-trust laws are for?

I am proud to be an American farmer. We feed the people! This is the *most* important occupation in the world! Why can't we be given the respect we deserve? We need fair prices at today's standard of living, not yesterday's!

If this merger goes through, Cargill will have even more power to control the farmer's prices and life. Look at the example of the hog farmer. What a shame the small hog farmer has been driven to give up. Why do all that hard work to lose money constantly?

Prices are already so horribly poor in all the markets we are hanging on only by the hope things will improve. When? Farmers can't wait much longer. Farmers work as hard as anybody in the world, yet can't get a fair price for all their hard work. Most everybody else's wages increase with the years. Not ours!

Look at rural America's communities. Their livelihood depends on what the farmer buys in town. There are many vacant stores in rural America. When the farmer doesn't have money, he stops buying everything but the bare necessities. It will trickle to the big cities eventually. Think depression! It's already here in rural America.

The U.S. Department of Justice needs to further investigate this merger and stop it! Also extend the deadline for comment and really get out in the rural communities and on the farms. *See* and *listen* to what its *really* like. Feel the hopelessness and pain!

What can the government do? Show us you care and stop this merger. Investigate who or what is *really* controlling the market. It's not the farmers who work so hard to feed the people!

Sincerely,

Ellen Stebbins

Pennack, MN 56279
October 6, 1999.
Roger W. Fones
Chief of Transportation, Energy And Agriculture Section, Antitrust Division, US Dept of Justice, 325 7th St., NW, Suite 550, Washington, DC 20530.

Dear Mr. Fones: As a retired owner of a 160 acre farm, my first interest is in farming and I am writing to protest the Cargill-Continental merger. Why are these big companies allowed to merge? Many years ago when I was in school there were antitrust laws to prevent monopolies. It seems that monopolies are now allowed so that among others, farmers have no say in setting prices on their products.

Monopolies are not only bad for farmers, they are bad for telephone users, cable to users, medical services and huge grocery store patrons. I think it is time to bring all of this to a stop.

Please do what you can to help farmers.

Sincerely,

Eleanor Stehieg

Stockton Ranch

Box 182,

Grass Range, MT 59032

October 11, 1999.
Roger W. Fones,
Chief of Transportation, Energy, and Agriculture Section, Fax: (202) 307–2784.

Dear Mr. Fones: the merger between Cargill and Continental will destroy any vestige of a competitive market for grains. I urge you to do a more thorough investigation before submitting a final judgment. Also the comment period has been too short for farmers to adequately respond to, please extend it by at least 60 days.

Sincerely yours,

Gilles Stockton

Lakin, Kansas 67860
October 12, 1999.
Mr. Roger Fones,
Chief Transportation, Energy & Agriculture Section, Antitrust Division, US Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Dear Mr. Fones: I WISH TO REQUEST THAT YOU GRANT FURTHER CONSIDERATION TO THE PROPOSED CARGILL AND CONTINENTAL GRAIN SALE. PLEASE GRANT A SIXTY DAY COMMENT PERIOD EXTENSION AS I KNOW THAT MANY PEOPLE DID NOT COMMENT AS THEY WERE MADE TO BELIEVE BY MEDIA PRESENTATIONS THAT IT WAS A ''DONE DEAL.''

Please conduct a more thorough investigation and abide by your requirements to give all facets of the matter due consideration. Thank you for your attention to the issue and your service to all the American public. We would not wish to believe the allegations that such a takeover with extremely grave consequences for farmer and the consuming public would not have your serious evaluation.

With sincere respects,

Dr. Frankie M. Summers

Greenwich, NY 12834
October 4, 1999.
Judge Gladys Kessler,
U.S. District Court for the District of Columbia, 333 Constitution Ave. NW, Washington, DC 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: Presently before you awaiting your approval is a ''Final Judgment'' filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

Legal precedent, according to the Department of Justice, requires that ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.' ''

In its July 8, 1999 ''Final Judgment'' I believe in fact that the Department of Justice has ''breached its duty to the public in consenting to the decree'' and that its ''Final Judgment'' is not ''within the reaches of the public interest.''

Clearly, as the Department of Justice's own ''Complaint'' states the Cargill purchase would ''substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices.''

Using the Department of Justice's own figures and criteria we see in its ''Complaint'' that even before this announced purchase the

U.S. grain trade was already dominated, if not monopolized, by Cargill and nothing in the Department of Justice's ''Final Judgment'' addresses itself to that important issue.

Likewise, the Department of Justice must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors.

For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest), pork packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and ''sophisticated'' firm, even more capable of strategic, cooperative, and anti-competitive behavior.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States I urge you to recommend that the Department of Justice withdraw its ''Final Judgment,'' study in far greater detail this ill-advised sale and carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Sincerely,

Daniel J. Swartz,

A SEED Europe.

Auburn University, Alabama 36849–5406

College of Agriculture, Department of Agricultural Economics, and Rural Sociology, 202 Comer Hall, Telephone: (334) 844–4800, FAX: (334) 844–5639

September 15, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street N.W., Suite 500, Washington, D.C. 20530.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Mr. Fones: I am writing to state my opposition to Cargill's acquisition of Continental Grain Company. My opposition is based not on disapproval of either Cargill or Continental as individual firms, but on the merger as it relates to the reorganization of global agriculture that is unprecedented in terms of size and speed.

My objections to this merger are that it would: (1) Continue the erosion of competition in agriculture markets, (2) increase the imbalance of economic power favoring agribusiness giants at the expense of the farmer, and (3) decrease land and resource stewardship incentives in the emerging system.

Competition is fading in agricultural markets in part because of unprecedented mergers and acquisitions, and in part because of insidious joint ventures, strategic alliances, interlocking directorates and partial ownership of related agribusiness firms. These alliances, which are very difficult to trace, result in a fuzzy web of corporations and cooperatives that soften, if not threaten, competition. In some circles, the alliances are appropriately referred to as ''corporate incest.''

As just one example out of thousands of alliances that threaten competition, I would point to a Cargill corn processing plant in Eddyville, IA, which is connected by pipeline to a Heartland Lysine plant nearby. Nearing completion is a Midwest Lysine plant located in Blair, NE, which will also be connected to the Cargill corn processing plant. Midwest Lysine is a joint venture between Cargill Degussa Corp, while Heartland Lysine is owned by the Japanese firm, Ajinomoto, of lysine price-fixing fame. Are Midwest Lysine and Heartland Lysine going to engage in rigorous competition? Hardly. Arrangements such as this do not appear to be properly considered in DOJ evaluations of mergers.

Perhaps of more concern than softening competition is the increasing economic power of giant corporations over farmers. The emerging food system has a few vertically integrated supply chains like Cargill, in which production is increasingly contracted out to farmers. With contract production, farmers have little economic power and continue in farming at the discretion of the supply chain corporations. Supply chain corporations can thus extract essentially all of the economic profits, leaving the contract farmer with a subsistence level of income composed of very low returns to management and labor.

Agricultural cooperatives were established under the Capper-Volstad Act as a way for farmers to horizontally organize to countervail market (economic) power held by corporations. Unfortunately, the giant cooperatives have drifted from this mission. Giant cooperatives are evolving to a vertical structure, run more for the benefit of managers that for benefit of the farmer members. At best, the farmer member is relegated to the position held by a minority stockholder in a corporation. At worst, the farmer member is a minority stockholder that cannot get his equity out of the corporation until death.

Cooperatives have formed hundreds of alliances and joint ventures with the giant corporations like Cargill. For example, Cargill has a 50–50 joint venture with Delta Growers Association, a Cooperative. Deals like this have the potential for a subtle ''co-opting of co-ops'' by corporations. Thus, in my opinion, many of the existing cooperatives should not be viewed as countervailing corporate power.

In this emerging vertically integrated supply system, the giant corporations do not own the land and other resources used in production agriculture, yet input and production decisions are dictated by CEO's. Incentives for conservation of land and other resource are thus lost, and could lead to degradation of natural resources. Furthermore, having land management decisions made by people (CEO's) who are not intimate with the land is asking for trouble.

Those of us in major poultry production areas have witnessed contracting for over 30 years. The bottom line is that contract producers invest one-half of the capital in the industry, yet capture a proportionally much smaller percentage of the returns. Moreover, contract poultry producers know that if they speak out against ''The Man'' (the integrator) they will be instantly bankrupt. Is this the kind of Society we want?

Individually, many of the recent mergers, acquisitions and joint ventures involving large agribusiness corporations may appear innocuous. Collectively, however, they are quickly moving us down the road to agricultural feudalism with only a few firms controlling much of the world's food supply. The DOJ appears to assess mergers in terms of horizontal competition, without giving adequate consideration to vertical power imbalances.

I respectfully request that you stop the merger of Cargill and Continental. All mergers of corporations and cooperatives alike should be blocked pending a thorough, objective evaluation of whether the frenzy of mergers, acquisitions and alliances is in Society's best interest.

Thank you.

Sincerely,

C. Robert Taylor,

ALFA Eminent Scholar and Professor of Agricultural Economics.

To: Mr. Roger W. Fones
Sent: 10/10/1999 at 2:44:56 PM
Subject: Cargill/Continental Grain Merger

Dear Sir: I respectfully request that you conduct a more thorough investigation of the Cargill/Continental grain sale before submitting a final judgment on the matter. Please extend the public comment period for another sixty days.

Sincerely,

Janice Urie,

Rt. 1, Box 28B, Lakin, KS 67860.

October 11, 1999.

Dear Sirs: I want to strongly oppose the proposed merger of Cargill and Continental Grain.

As a farmer from South Dakota we need all the competing entities we can get it called capitalism!

No No No

Sincerely,

James H. Peht,

Keldion, SD 57634.

October 11, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh

Street, NW, Suite 500, Washington, DC 20530.

FAX: 202/307–2784

Dear Mr. Fones: The purpose of this letter is to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

The creation of a larger monopoly will not only depress grain prices further in this country, but also be detrimental to all consumers.

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S., farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give this your serious consideration.

Sincerely,

Gerald Luin.

Litchfield, MN

Roger W. Fones: Please do not let Cargill merge with Continental. Cargill is the most disliked name in Agriculture. Cargill don't respect other businesses. It thinks of Cargill's bottom line only. They are making massive amounts of money on farmers. In the mean time farmers are making record low profits. USDA census reports 50% of farmers in the U.S. are making a profit and 50% are not. They flood the market with livestock. I would rather see farmers produce the livestock. Wouldn't you? When I drive around my county I see empty livestock facilities everywhere. Rural America is getting very ugly. It is very depressing.

Cargill also imports grain into the U.S. which floods our markets and this lower our prices. Cargill is giving up in South America to buy grain down there to flood the world with more grain.

I know a very reputable grain elevator owner. He is furious with Cargill. He sells his grain to loading facilities on the river. He is faced to sell most of his grain to Cargill because of lack of competition. Cargill treats this elevator owner very poorly. Cargill close at 3:00, which doesn't allow much time to haul grain there 70 miles away. There was also a problem with the size of the trucks he uses. They don't want him hauling there anymore. They are simply disrespectful people.

Farmers could buy chicken manure from a large complex here. Cargill moved in and bought up all the manure and are not doubling the price for the manure. I am an organic farmer. I need to stockpile manure for six months. I called Cargill to see if I could pick it up myself and they said no.

Cargill also got into the scrap metal industry recently. The scrap prices dropped to record low levels. Both of our scrap metal buyers are going out of business in one year. Is there a connection?

I tried to buy a bag of salt and without the Cargill name on it. Six out of eight businesses sold Cargill band salt in my town.

We heard that other countries get very poor quality grain from Cargill. These countries would like to try farmer direct to get better quality. We've tried to do that, but the facilities would not allow that. We need public facilities. Could the government buy Continental Grain? Cargill also has a negative impact on government for farmers.

This company is getting too big. It doesn't respect other people in business. There is a lot of people trying to make a living in this country. It is unfair to let the big get bigger and the small independents get swept under the rug.

I will not do business with Cargill, and I know many other people who also will not.

It's time to realize bigness is hurting independent business in this country. This is making rural US.

Please think PEOPLE BEFORE MONEY. It's time to regulate how big a company can get. It's our responsibility to secure our future for he young people who want to be independent.

Thank you for reading my letter. Please do the right thing.

Sincerely,

Scott D. Anderson.

Mr. Roger Fones, Chief, Transportation, Energy & Agriculture, Antitrust Division, US Dept. of Justice, 325 Seventh Street, NW, #500, Washington, DC 20530.

Re: Final Judgment on Cargill's proposed purchase of Continental Grain

Dear Mr. Fones: We are very opposed to this purchase! It will less competition and decrease prices for farmers. This is bad for all farmers who are not large agri businesses. We ask you to deny this purchase.

Rosie Seymour,

Superior WI 54880

Bob,

Superior WI 54880

Michael C. Cramey,

Foxboro, WI 54836

Connie M. Cramey,

Chaffey Rd, Foxboro WI 54836

Laura Cenley,

Superior, WI 54880

Janice Watten,

Duluth, MN 55805

Carol Stevens,

Superior, WI 54880

Dear Mr. Roger Fones: As an independent agricultural producer, I strongly urge you to conduct a more thorough investigation of the Cargill/Continental Grain sale. Please extend the public comment period for another sixty days.

Sincerely,

[no signature]

[FR Doc. 00–4591 Filed 3–23–00; 8:45 am]

BILLING CODE 4410–11–M

Federal Register

Friday,
March 24, 2000

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development; Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–12]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register,** the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: DOT: Mr. Rugene Spruill, Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW, Room 2310; (202) 366–4246; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: March 16, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 3/24/00

Suitable/Available Properties

Buildings (by State)

Hawaii

Bldg. S87, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 77199240011
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 64, Radio Trans. Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 77199310004
Status: Unutilized
Comment: 3612 sq. ft., 1-story, access restrictions, needs rehab, most recent use—storage, off-site use only

Bldg. 442, Naval Station
Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199630088
Status: Excess
Comment: 192 sq. ft., most recent use—storage, off-site use only

Bldg. S180
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640039
Status: Unutilized
Comment: 3412 sq. ft., 2-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible

Bldg. S181
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640040
Status: Unutilized
Comment: 4258 sq. ft., 1-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible

Bldg. 219
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640041
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible

Bldg. 220

Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640042
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible

Bldg. 160
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840002
Status: Excess
Comment: 6070 sq. ft., needs rehab, presence of lead paint, most recent use—storage/office, off-site use only

Facility No. 92
Naval Computer & Telecom.
Area Master Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199930076
Status: Excess
Comment: 1008 sq. ft., needs rehab, most recent use—storage, off-site use only

Facility No. 99
Naval Computer & Telecom. Area Master Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199930077
Status: Excess
Comment: 544 sq. ft., concrete, needs rehab, presence of asbestos, most recent use—storage, off-site use only

Facility No. 127
Naval Computer & Telecom. Area Master Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199930078
Status: Excess
Comment: 198 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Facility No. 227
Naval Computer & Telecom. Area Master Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199930079
Status: Excess
Comment: 2240 sq. ft., needs rehab, presence of asbestos, most recent use—weight room, off-site use only

Facility No. 285
Naval Computer & Telecom. Area Master Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199930080
Status: Excess
Comment: 418 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 5175
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Landholding Agency: Navy
Property Number: 77199940033
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only

Bldg. 5179
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Landholding Agency: Navy
Property Number: 77199940034
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only

Bldg. 5183
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Landholding Agency: Navy
Property Number: 77199940035
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only

Bldg. 5187
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Landholding Agency: Navy
Property Number: 77199940036
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only

Bldg. 5191
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96705–
Landholding Agency: Navy
Property Number: 77199940037
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only

Bldg. 5193
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Landholding Agency: Navy
Property Number: 77199940038
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only

Maine

Bldg. 4
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930005
Status: Excess
Comment: 16,644 sq. ft., presence of asbestos/lead paint, most recent use—headquarters building, off-site use only

Bldg. 8
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930006
Status: Excess
Comment: 7413 sq. ft., presence of asbestos/lead paint, most recent use—public works building, off-site use only

Bldg. 12
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930007
Status: Excess
Comment: 25,354 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 41
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930008
Status: Excess
Comment: 10,526 sq. ft., presence of asbestos/lead paint, most recent use—security building, off-site use only

New Hampshire

Bldg. 128
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830015
Status: Excess
Comment: 10,900 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Bldg. 185
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830016
Status: Excess
Comment: 2310 sq. ft., needs rehab, presence of asbestos, most recent use—office, off-site use only

Bldg. 314
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830017
Status: Excess
Comment: cement block bldg., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Bldg. 336
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830018
Status: Excess
Comment: metal bldg w/cement block foundation, off-site use only

Bldg. 160
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910046
Status: Unutilized
Comment: 6080 sq. ft., possible asbestos, most recent use—storage, off-site use only

New Jersey

Old Bridge Housing
Route 9
Old Bridge Co: NJ 08857–
Landholding Agency: GSA
Property Number: 54199940010
Status: Excess
Comment: 12 three bedroom housing units, no long-term wastewater treatment system for property, presence of asbestos/lead paint, needs repair
GSA Number: 0–0–NJ–000

Bldg. D1–A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77199940024

Status: Unutilized
Comment: 1134 sq. ft., presence of lead paint, most recent use—smokehouse/lunchroom, off-site use only

Bldg. HA–1A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77199940025
Status: Unutilized
Comment: 120 sq. ft., most recent use—storage, off-site use only

Suitable/Unavailable Properties

Buildings (by State)

Puerto Rico

Bldgs. 501 & 502
U.S. Naval Radio Transmitter Facility
State Road No. 2
Juana Diaz PR 00795–
Landholding Agency: Navy
Property Number: 77199530007
Status: Underutilized
Comment: Reinforced concrete structures, limited access, needs rehab, most recent use—transmitter and power house

Virginia

Naval Medical Clinic
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508–
Landholding Agency: Navy
Property Number: 77199010109
Status: Unutilized
Comment: 3665 sq. ft., 1 story, possible asbestos, most recent use—laundry.

Land (by State)

Virginia

Naval Base
Norfolk Co: Norfolk VA 23508–
Location: Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 77199010156
Status: Unutilized
Comment: 60 acres; most recent use—sandpit; secured area with alternate access.

Land—CD area
Naval Base Norfolk
Norfolk VA 23511–2797
Landholding Agency: Navy
Property Number: 77199830022
Status: Unutilized
Comment: 2 acres, open space

Suitable/To Be Excessed

Buildings (by State)

Puerto Rico

Bldg. 561
Former Ramey AFB
Aquadilla PR 00604–
Landholding Agency: Navy
Property Number: 77199630001
Status: Unutilized
Comment: 102666 sq. ft. bldg. on 5.006 acres, most recent use—manufacturing, office and freight distribution center, presence of asbestos

Unsuitable Properties

Buildings (by State)

Alaska

''Gazebo''
Coast Guard
Cordova Co: AK 99574–
Landholding Agency: DOT
Property Number: 87200010002
Status: Unutilized
Reason: Extensive deterioration

California

Bldg. 210
Naval Station, San Diego
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830001
Status: Excess
Reason: Extensive deterioration

Bldg. 444
Naval Station
San Diego CA 92136–5065
Landholding Agency: Navy
Property Number: 77199830122
Status: Excess
Reason: Extensive deterioration

Bldg. 209
Naval Station, San Diego
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199840001
Status: Excess
Reason: Extensive deterioration

Bldgs. 20106, 20195
Naval Air Weapons Station
China Lake Co: CA 93555–
Landholding Agency: Navy
Property Number: 77199930001
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 40, 62
Naval Air Station, North Island
Imperial Beach Co: CA 91932–
Landholding Agency: Navy
Property Number: 77199930024
Status: Excess
Reason: Extensive deterioration

Bldg. 5UT4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930081
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5US4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930082
Status: Unutilized
Reason: Extensive deterioration

Bldg. 127
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930083
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930084
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930085
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930086
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930087
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930088
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930089
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930090
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930091
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5C6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930092
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5C7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930093
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5C8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930094
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5C9
Marine Corps Recruit Depot

San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930095
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5D1
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930096
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5D2
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930097
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5D3
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930098
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5D4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930099
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5D5
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930100
Status: Unutilized
Reason: Extensive deterioration

Bldg. 206
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930105
Status: Unutilized
Reason: Extensive deterioration

Bldg. 432
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930106
Status: Unutilized
Reason: Extensive deterioration

Bldg. 433
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930107
Status: Unutilized
Reason: Extensive deterioration

Bldg. 435
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930108
Status: Unutilized
Reason: Extensive deterioration

Bldg. 456
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930109
Status: Unutilized
Reason: Extensive deterioration

Bldg. 921
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930110
Status: Unutilized
Reason: Extensive deterioration

Bldg. 201
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 205
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 227
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 230
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 232
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 337
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 338
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 339
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940009
Status: Unutilized
Reason: Extensive deterioration

Bldg. 349
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940010
Status: Unutilized
Reason: Extensive deterioration

Bldg. 362
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940011
Status: Unutilized
Reason: Extensive deterioration

Bldg. 363
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940012
Status: Unutilized
Reason: Extensive deterioration

Bldg. 410
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940013
Status: Unutilized
Reason: Extensive deterioration

Bldg. 438
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940014
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q100
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940067
Status: Excess
Reason: Extensive deterioration

Bldg. Q102
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940068
Status: Excess
Reason: Extensive deterioration

Bldg. 106
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940069
Status: Excess
Reason: Extensive deterioration

Bldg. 111
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940070
Status: Excess
Reason: Extensive deterioration

Bldg. 112
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940071
Status: Excess
Reason: Extensive deterioration

Bldg. 613
NAS, North Island
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940072
Status: Excess
Reason: Extensive deterioration

Bldg. 55
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940073
Status: Excess
Reason: Extensive deterioration

OT68 Space & Navy Warfare Systems Center
San Diego Co: CA 92152-5001
Landholding Agency: Navy
Property Number: 77200010076
Status: Unutilized
Reason: Floodway

Bldg. 1234
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010077
Status: Excess
Reason: Extensive deterioration

Bldg. 1439
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010078
Status: Excess
Reason: Extensive deterioration

Bldg. 1443
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010079
Status: Excess
Reason: Extensive deterioration

Bldg. 2231
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010080
Status: Excess
Reason: Extensive deterioration

Bldg. 2232
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010081
Status: Excess
Reason: Extensive deterioration

Bldg. 2582
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010082
Status: Excess
Reason: Extensive deterioration

Bldg. 2583
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010083
Status: Excess
Reason: Extensive deterioration

Bldg. 21544
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010084
Status: Excess
Reason: Extensive deterioration

Bldg. 21549
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010085
Status: Excess
Reason: Extensive deterioration

Bldg. 25131
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010086
Status: Excess
Reason: Extensive deterioration

Bldg. 32927
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010087
Status: Excess
Reason: Extensive deterioration

Bldg. 130167
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010088
Status: Excess
Reason: Extensive deterioration

Bldg. 130175
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010089
Status: Excess
Reason: Extensive deterioration

Bldg. 20176
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010090
Status: Excess
Reason: Extensive deterioration

Bldg. 201487
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010091
Status: Excess
Reason: Extensive deterioration

Bldg. 1684
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010092
Status: Excess
Reason: Extensive deterioration

Bldg. 16146
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010093
Status: Excess
Reason: Extensive deterioration

Bldg. 43332
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010094
Status: Excess
Reason: Extensive deterioration

Bldg. 43333
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010095
Status: Excess
Reason: Extensive deterioration

Bldg. 43334
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010096
Status: Excess
Reason: Extensive deterioration

Bldg. 43335
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010097
Status: Excess
Reason: Extensive deterioration

Bldg. 43336
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010098
Status: Excess
Reason: Extensive deterioration

Bldg. 43337
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010099
Status: Excess
Reason: Extensive deterioration

Bldg. 52651
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010100
Status: Excess
Reason: Extensive deterioration

Connecticut

DG1–DG8, DG10–DG–27
Dolphin Gardens
Naval Submarine Base New London
Groton Co: New London Ct 06349–
Landholding Agency: Navy
Status: Unutilized
Reason: Extensive deterioration

Florida

Bldg. 648
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920087
Status: Unutilized
Reason: Secured Area

Bldg. 1882
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920088
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3228
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920089
Status: Unutilized
Reason: Secured Area

Bldg. 3604
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920090
Status: Unutilized
Reason: Secured Area

Bldg. 3605
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920091
Status: Unutilized
Reason: Secured Area

Bldg. 3626
Naval Air Station

Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920092
Status: Unutilized
Reason: Secured Area

Bldg. 3674
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920093
Status: Unutilized
Reason: Secured Area

Bldg. A–146
Boca Chica Annex
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199930027
Status: Unutilized
Reason: Extensive deterioration

Bldg. A–232
Boca Chica Annex
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199930028
Status: Unutilized
Reason: Extensive deterioration

Bldg. A–4020
Boca Chica Annex
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199930029
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3451
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199940066
Status: Unutilized
Reason: Secured Area

Georgia

Bldg. 3012
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199910001
Status: Unutilized
Reason: Extensive deterioration

Facility 5001
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940016
Status: Unutilized
Reason: Secured Area

Facility 5002
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940017
Status: Unutilized
Reason: Secured Area

Facility 5003
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940018
Status: Unutilized
Reason: Secured Area

Facility 5935
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940019
Status: Unutilized
Reason: Secured Area

Guam

Bldg. 296
Communications Annex
Dededo Co: GU 96537–
Landholding Agency: Navy
Property Number: 77199920132
Status: Unutilized
Reason: Secured Area

Structures 312, 1792
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–
Landholding Agency: Navy
Property Number: 77199930002
Status: Excess
Reason: Secured Area

Structures 2020, 2021
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–
Landholding Agency: Navy
Property Number: 77199930003
Status: Excess
Reason: Secured Area

Bldg. 3171
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–
Landholding Agency: Navy
Property Number: 77199930004
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 76
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930047
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 264
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930048
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 2012
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930049
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3114
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930050
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3151
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930051
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3152
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930052
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3153
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930053
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3154
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930054
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3155
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930055
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3268A
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930056
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 4400
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930057
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 4402
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930058

Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 4414
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930059
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 4425
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930060
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 4426–4428
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930061
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 5408
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930062
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 5540
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930063
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 5541
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930064
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Small Craft Bldg.
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930065
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Hawaii

Bldg. 126, Naval Magazine
Waikele Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Extensive Deterioration, Secured Area

Bldg. Q75, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230013
Status: Unutilized
Reasons: Extensive Deterioration, Secured Area

Bldg. 7, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230014
Status: Unutilized
Reasons: Extensive Deterioration, Secured Area

Bldg. 6, Pear Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199410003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 10, Pear Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199410004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9
Navy Public Works Center
Kolekole Road
Lualualei Co: Honolulu HI 96782–
Landholding Agency: Navy
Property Number: 77199530009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. X5
Nanumea Road
Pearl Harbor Co: Honolulu HI 96782–
Landholding Agency: Navy
Property Number: 77199530010
Status: Excess
Reason: Secured Area

Bldg. SX30
Nanumea Road
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199530011
Status: Excess
Reason: Secured Area

Bldg. 98
Pearl Harbor Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199620032
Status: Excess
Reason: Extensive deterioration

Bldg. Q13
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640035
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q14
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640036
Status: Unutilized
Reason: Extensive deterioration

Bldg. 40
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830028
Status: Unutilized
Reason: Extensive deterioration

Bldg. 50
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830029
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q76
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830030
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q334
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830031
Status: Unutilized
Reason: Extensive deterioration

Bldg. S380
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830032
Status: Unutilized
Reason: Extensive deterioration

Bldg. S381
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830033
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q410
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830034
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q422
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830035
Status: Unutilized
Reason: Extensive deterioration

Bldg. 429
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830036
Status: Unutilized
Reason: Extensive deterioration

Bldg. 431
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830037

Status: Unutilized
Reason: Extensive deterioration

Bldg. 447
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830038
Status: Unutilized
Reason: Extensive deterioration

Facility S–721
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840042
Status: Excess
Reason: Secured Area

Facility S–897
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840043
Status: Excess
Reason: Secured Area

Facility S–937
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840044
Status: Excess
Reason: Secured Area

Facility 19
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840045
Status: Excess
Reason: Secured Area

Facility 63
Naval Computer & Telecomm. Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199920013
Status: Excess
Reason: Extensive deterioration

Facility SX30
Naval Public Works Center
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199920027
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 102
Molokai Training Support Facility
Molokai Co: HI 96820–
Landholding Agency: Navy
Property Number: 77199930066
Status: Unutilized
Reason: Extensive deterioration

Bldg. 103
Molokai Training Support Facility
Molokai Co: HI 96820–
Landholding Agency: Navy
Property Number: 77199930067
Status: Unutilized
Reason: Extensive deterioration

Bldg. 104
Molokai Training Support Facility
Molokai Co: HI 96820–
Landholding Agency: Navy
Property Number 77199930068
Status: Unutilized
Reason: Extensive deterioration

Bldg. 107
Molokai Training Support Facility
Molokai Co: HI 96820–
Landholding Agency: Navy
Property Number 77199930069
Status: Unutilized
Reason: Extensive deterioration

Bldg. 108
Molokai Training Support Facility
Molokai Co: HI 96820–
Landholding Agency: Navy
Property Number 77199930070
Status: Unutilized
Reason: Extensive deterioration

Bldg. 330
NCTAMS PAC
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199940061
Status: Excess
Reason: Extensive deterioration

Bldg. 348
NCTAMS PAC
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199940062
Status: Excess
Reason: Extensive deterioration

Bldg. 349
NCTAMS PAC
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199940063
Status: Excess
Reason: Extensive deterioration

Illinois

Bldg. 415
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840023
Status: Unutilized
Reason: Secured Area

Bldg. 1015
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840024
Status: Unutilized
Reason: Secured Area

Bldg. 1016
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840025
Status: Unutilized
Reason: Secured Area

Bldg. 910
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920055
Status: Unutilized
Reason: Secured Area

Bldg. 800
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920056
Status: Unutilized
Reason: Secured Area

Bldg. 1000
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920057
Status: Unutilized
Reason: Secured Area

Bldg. 1200
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920058
Status: Unutilized
Reason: Secured Area

Bldg. 1400
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920059
Status: Unutilized
Reason: Secured Area

Bldg. 1600
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920060
Status: Unutilized
Reason: Secured Area

Bldg. 2600
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920061
Status: Unutilized
Reason: Secured Area

Maine

Aircraft Hanger #2
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199810015
Status: Excess
Reason: Extensive deterioration

Bldg. 13
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840005
Status: Excess
Reason: Extensive deterioration

Bldg. 15
Naval Air Base
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840006
Status: Excess
Reason: Extensive deterioration

Bldg. 16
Naval Air Base
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840007
Status: Excess
Reason: Extensive deterioration

Maryland

15 Bldgs.
Naval Air Warfare Center
Patuxent River Co: St. Mary's MD 20670–5304
Landholding Agency: Navy
Property Number: 77199730062
Status: Unutilized
Reason: Extensive deterioration

Mississippi

Bldg. 78
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830047
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 113
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830048
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 147
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830049
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 187
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830050
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 75
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 179
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Structure 262
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 279
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 326
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 412
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

New Hampshire

Bldg. 89
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830086
Status: Unutilized
Reason: Secured Area

Bldg. 99
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830088
Status: Unutilized
Reason: Secured Area

Bldg. 115
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830089
Status: Unutilized
Reason: Secured Area

Bldg. 178
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830090
Status: Unutilized
Reason: Secured Area

Bldg. 298
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830091
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. H–21
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830092
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Dry Dock 1
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840012
Status: Underutilized
Reason: Secured Area

Dry Dock 3
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840013
Status: Underutilized
Reason: Secured Area

Berth 2
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840014
Status: Underutilized
Reason: Secured Area

Berth 11
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840015
Status: Underutilized
Reason: Secured Area

Parcel #1
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910002
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Parcel #2
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910003
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Parcel #3
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910004
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration

Bldg. 55
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199940020
Status: Unutilized
Reason: Secured Area

Bldg. 150
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199940021
Status: Unutilized
Reason: Secured Area

New Jersey

Bldg. 188
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199830065
Status: Unutilized
Reason: Extensive deterioration

Bldg. 473
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199920024
Status: Unutilized
Reason: Extensive deterioration

Bldg. 474
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199920025
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 220, 234, 236
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199930017
Status: Unutilized
Reason: Extensive deterioration

28 Sheds
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77199940026
Status: Unutilized
Reason: Extensive deterioration

North Carolina

Bldg. 96
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820111
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 97
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820112
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 169
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820113
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 196
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820114
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 477
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820115
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3422
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820116
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. TC–849
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199920062
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. TC–852
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199920063
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 2159
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number: 77199920146
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Structure 3758
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number: 77199920147
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 8027
Marine Corps Air Station, Cherry Point
Bogue Co: NC 28584–
Landholding Agency: Navy
Property Number: 77199930043
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 8028
Marine Corps Air Station, Cherry Point
Bogue Co: NC 28584–
Landholding Agency: Navy
Property Number: 77199930044
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 1649
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199940022
Status: Excess
Reasons: Secured Area, Extensive deterioration

Pennsylvania

Bldg. 524
Naval Systems Engineering Station
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830023
Status: Unutilized
Reason: Extensive deterioration

Bldg. 152
Naval Air Station Willow Grove
Willow Grove Co: Montgomery PA 19113–
Landholding Agency: Navy
Property Number: 77199930018
Status: Excess
Reason: Extensive deterioration

Bldg. 185
Naval Air Station Willow Grove
Willow Grove Co: Montgomery PA 19113–
Landholding Agency: Navy
Property Number: 77199930019
Status: Excess
Reason: Extensive deterioration

Bldg. 603
Naval Support Station
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77199940015
Status: Unutilized
Reason: Extensive deterioration

Facility 22
Naval Support Station
Philadelphia Co: PA 19111–5098
Landholding Agency: Navy
Property Number: 77199940060
Status: Excess
Reason: Extensive deterioration

Puerto Rico

Bldg. 433
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830066
Status: Unutilized
Reason: Extensive deterioration

Bldg. 434
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830067
Status: Unutilized
Reason: Extensive deterioration

Bldg. 464
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830068
Status: Unutilized
Reason: Extensive deterioration

Bldg. 762
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830069
Status: Unutilized
Reason: Extensive deterioration

Bldg. 763
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830070
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1927
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830071
Status: Unutilized
Reason: Extensive deterioration

Bldg. 175
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830072
Status: Unutilized
Reason: Extensive deterioration

Former No. 2091
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830073
Status: Unutilized
Reason: Extensive deterioration

Bldg. 261/1692
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830074
Status: Unutilized
Reason: Extensive deterioration

Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830075
Status: Unutilized
Reason: Extensive deterioration

Bldg. 781
Naval Station Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1740
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1933
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910008
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1934
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910009
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1976
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910010
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2001
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910011
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Location: 440, 441, 442, 443
Landholding Agency: Navy
Property Number: 77199920120
Status: Underutilized
Reason: Secured Area

Bldg. 444
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920121
Status: Underutilized
Reason: Secured Area

Bldgs. 445–447
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920122
Status: Underutilized
Reason: Secured Area

6 Bldgs.
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Location: 448, 449, 450, 451, 452, 455
Landholding Agency: Navy
Property Number: 77199920123
Status: Underutilized
Reason: Secured Area

Bldg. 458
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920124
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 461, 2157
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920125
Status: Underutilized
Reason: Secured Area

Bldgs. 28–29
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920126
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 30–31
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920127
Status: Unutilized
Reason: Extensive deterioration

Bldg. 104
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920128
Status: Unutilized
Reason: Extensive deterioration

Bldg. 459
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920129
Status: Unutilized
Reason: Extensive deterioration

Structure 460
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920130
Status: Underutilized
Reason: Secured Area

Rhode Island

Bldg. 52
Gould Island, Naval Station
Newport Co: RI 00000–
Landholding Agency: Navy
Property Number: 77199930020
Status: Excess
Reasons: Not accessible by road, Extensive deterioration

Tennessee

20 Bldgs.
Naval Support Activity
Millington Co: Shelby TN 38054–
Location: 766, 1597–1598, 5238, 435–446, S239, S75, 1211, 1379
Landholding Agency: Navy
Property Number: 77199940027
Status: Excess
Reasons: Secured Area, Extensive deterioration

Texas

Bldgs. 1561, 1562, 1563
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820050
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1190
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820053
Status: Unutilized
Reasons: Secured Area

Bldg. 1820
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820054
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Facilities 105 and 105C
Naval Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199910012
Status: Unutilized
Reason: Extensive deterioration

Bldg. 101
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940052
Status: Excess
Reason: Extensive deterioration

Bldg. 198
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940053
Status: Excess
Reason: Extensive deterioration

Bldg. 1104
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940054
Status: Excess
Reason: Extensive deterioration

Bldg. 1198
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940055
Status: Excess
Reason: Extensive deterioration

Bldg. 1823
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940056
Status: Excess
Reason: Extensive deterioration

Bldg. H–9
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940057
Status: Excess
Reason: Extensive deterioration

Bldg. H–45

Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940058
Status: Excess
Reason: Extensive deterioration

Bldg. H–54
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940059
Status: Excess
Reason: Extensive deterioration

Virginia

Fleet Training Center
Fire Fighting Training Facility
SDA–323, SDA–324, SDA–325, SDA–326
Norfolk, VA 23511–
Landholding Agency: Navy
Property Number: 77199740010
Status: Unutilized
Reason: Extensive deterioration

Bldg. 02
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 77199810073
Status: Excess
Reason: Extensive deterioration

Bldg. 2208
Naval Medical Clinic
Quantico, VA
Landholding Agency: Navy
Property Number: 77199820001
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 358, 359
Cheatham Annex
Williamsburg, VA 23185–
Landholding Agency: Navy
Property Number: 77199820023
Status: Excess
Reason: Extensive deterioration

Bldgs. CAD–43
Cheatham Annex
Williamsburg, VA 23185–
Landholding Agency: Navy
Property Number: 77199820024
Status: Excess
Reason: Extensive deterioration

Bldg. CAD–102
Cheatham Annex
Williamsburg, VA 23185–
Landholding Agency: Navy
Property Number: 77199820025
Status: Excess
Reason: Extensive deterioration

Bldg. CAD–102A
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820026
Status: Excess
Reason: Extensive deterioration

Bldg. CAD–127
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820027
Status: Excess
Reason: Extensive deterioration

Bldg. CAD–40
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199830084
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1256
Naval Amphibious Base Little Creek
Norfolk Co: VA 23521–2616
Landholding Agency: Navy
Property Number: 77199910013
Status: Excess
Reason: Extensive deterioration

Bldg. W219
Naval Base Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77199910014
Status: Excess
Reason: Secured Area

Bldg. SP76AQ
Naval Air Station
Norfolk Co: VA 23511–2797
Landholding Agency: Navy
Property Number: 77199910051
Status: Excess
Reason: Extensive deterioration

Bldg. CA502
Naval Station Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77199910052
Status: Excess
Reason: Secured Area

Bldg. 3074
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77199920026
Status: Unutilized
Reason: Extensive deterioration

Bldg. SC–319
Armed Forces Staff College
Norfolk Naval Base
Norfolk Co: VA 23511–1702
Landholding Agency: Navy
Property Number: 77199920067
Status: Excess
Reason: Extensive deterioration

Bldg. 449
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920068
Status: Excess
Reason: Extensive deterioration

Bldg. 450
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920069
Status: Excess
Reason: Extensive deterioration

Bldg. 451
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920070
Status: Excess
Reason: Extensive deterioration

Bldg. 453
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920071
Status: Excess
Reason: Extensive deterioration

Bldg. 454
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920072
Status: Excess
Reason: Extensive deterioration

Bldg. 708
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920073
Status: Excess
Reason: Extensive deterioration

Bldg. 709
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920074
Status: Excess
Reason: Extensive deterioration

Bldg. 710
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920075
Status: Excess
Reason: Extensive deterioration

Bldg. 711
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920076
Status: Excess
Reason: Extensive deterioration

Bldg. 712
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920077
Status: Excess
Reason: Extensive deterioration

Bldg. 713
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920078
Status: Excess
Reason: Extensive deterioration

Bldg. 714
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920079
Status: Excess
Reason: Extensive deterioration

Bldg. 715
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920080
Status: Excess
Reason: Extensive deterioration

Bldg. 716
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920081
Status: Excess
Reason: Extensive deterioration

Bldg. 717

Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920082
Status: Excess
Reason: Extensive deterioration

Bldg. 718
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920083
Status: Excess
Reason: Extensive deterioration

Bldg. 1454
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920084
Status: Excess
Reason: Extensive deterioration

Bldg. 3170
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77199940064
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1252, 1277
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77199940065
Status: Unutilized
Reason: Extensive deterioration

Washington

Bldg. 6661
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–6499
Landholding Agency: Navy
Property Number: 77199730039
Status: Unutilzied
Reason: Secured Area

Bldg. 604
Manchester Fuel Department
Port Orchard WA 98366–
Landholding Agency: Navy
Property Number: 77199810170
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 288
Fleet Industrial Supply Center
Bremerton WA 98314–5100
Landholding Agency: Navy
Property Number: 77199810171
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 47
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199820056
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 48
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199820057
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Coal Handling Facilties
Puget Sound Naval Shipyard
#908, 919, 926–929
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77199820142
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 193
Puget Sound Naval Shipyard
Bremerton WA 98310–
Landholding Agency: Navy
Property Number: 77199820143
Status: Unutilized
Reason: Contamination

Bldg. 202
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830019
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 2649
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830020
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration

Bldg. 35, 36
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199830076
Status: Unutilized
Reason: Extensive deterioration

Bldg. 918
Puget Sound Naval Shipyard
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77199840020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 894
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77199920085
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 73
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345—
Landholding Agency: Navy
Property Number: 77199920152
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 210A
Naval Station Bremerton
Bremerton Co: WA 98314—
Landholding Agency: Navy
Property Number: 77199930021
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 511
Naval Station Bremerton
Bremerton Co: WA 98314—
Landholding Agency: Navy
Property Number: 77199930022
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 527
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930023
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 97
Naval Air Station
Whidbey Island
Oak Harbor Co: WA 98278–
Landholding Agency: Navy
Property Number: 77199930040
Status: Unutilized
Reason: Extensive deterioration

Bldg. 331
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199930041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 786
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199930042
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 15
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930071
Status: Unutilized
Reason: Extensive deterioration

Bldg. 119
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930072
Status: Unutilized
Reason: Extensive deterioration

Bldg. 853
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930073
Status: Unutilized
Reason: Extensive deterioration

Bldg. 854
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930074
Status: Unutilized
Reason: Extensive deterioration

Bldg. 166
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930101
Status: Excess
Reason: Secured Area

Bldg. 287

Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930102
Status: Excess
Reason: Secured Area

Bldg. 418
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930103
Status: Excess
Reason: Secured Area

Bldg. 858
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930104
Status: Excess
Reason: Secured Area

Land (by State)

California

Space Surv. Field Station
Portion/Off Heritage Road
San Diego CA 90012–1408
Landholding Agency: Navy
Property Number: 77199820049
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Land
Naval Construction Battalion Center
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77199940001
Status: Underutilized
Reason: Secured Area

Maryland

6 Acres
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77199940023
Status: Unutilized
Reason: Secured Area

North Carolina

0.85 parcel of land
Marine Corps Air Station,
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199740074
Status: Unutilized
Reason: Secured Area

Washington

Land-Port Hadlock Detachment
Naval Ordnance Center
Pacific Division
Port Hadlock Co: Jefferson WA 98339–
Landholding Agency: Navy
Property Number: 77199640019
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

[FR Doc. 00–6989 Filed 3–23–00; 8:45 am]

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Federal Register

Friday,
March 24, 2000

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Contiguous U.S. Distinct Population Segment of the Canada Lynx and Related Rule; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF03

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Contiguous U.S. Distinct Population Segment of the Canada Lynx and Related Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened status for the contiguous U.S. Distinct Population Segment of the Canada lynx (*Lynx canadensis*), with a special rule, pursuant to the Endangered Species Act of 1973, as amended. This population segment occurs in forested portions of the States of Colorado, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, Oregon, Utah, Vermont, Washington, and Wisconsin. The contiguous U.S. Distinct Population Segment of the lynx is threatened by the inadequacy of existing regulatory mechanisms. Current U.S. Forest Service Land and Resource Management Plans include programs, practices, and activities within the authority and jurisdiction of Federal land management agencies that may threaten lynx or lynx habitat. The lack of protection for lynx in these Plans render them inadequate to protect the species.

EFFECTIVE DATE: April 24, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Montana Field Office, U.S. Fish and Wildlife Service, 100 N. Park Avenue, Suite 320, Helena, Montana 59601.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, Field Supervisor, Montana Field Office (see **ADDRESSES** section) (telephone 406/449–5225; facsimile 406/449–5339).

Background

The Canada lynx, hereafter referred to as lynx, is a medium-sized cat with long legs; large, well-furred paws; long tufts on the ears; and a short, black-tipped tail (McCord and Cardoza 1982). Adult males average 10 kilograms (22 pounds) in weight and 85 centimeters (33.5 inches) in length (head to tail), and females average 8.5 kilograms (19 pounds) and 82 centimeters (32 inches) (Quinn and Parker 1987). The lynx's long legs and large feet make it highly adapted for hunting in deep snow.

The bobcat (*Lynx rufus*) is a North American relative of the lynx. Compared to the lynx, the bobcat has smaller paws, shorter ear tufts, and a more spotted pelage (coat), and only the top of the tip of the tail is black. The paws of the lynx have twice the surface area as those of the bobcat (Quinn and Parker 1987). The lynx also differs in its body proportions in comparison to the bobcat. Lynx have longer legs, with hind legs that are longer than the front legs, giving the lynx a ''stooped'' appearance (Quinn and Parker 1987). Bobcats are largely restricted to habitats where deep snows do not accumulate (Koehler and Hornocker 1991). Hybridization (breeding) between lynx and bobcat is not known (Quinn and Parker 1987).

Classification of the Canada lynx (also called the North American lynx) has been subject to revision. In accordance with Wilson and Reeder (1993), we currently recognize the lynx in North America as *Lynx canadensis.* We previously used the latin name *L. lynx canadensis* for the lynx (Jones *et al.* 1992; S. Williams, Texas Tech University, pers. comm. 1994). Other scientific names still in use include *Felis lynx* or *F. lynx canadensis* (Jones *et al.* 1986; Tumlison 1987).

The historical and present range of the lynx north of the contiguous United States includes Alaska and that part of Canada that extends from the Yukon and Northwest Territories south across the United States border and east to New Brunswick and Nova Scotia. In the contiguous United States, lynx historically occurred in the Cascades Range of Washington and Oregon; the Rocky Mountain Range in Montana, Wyoming, Idaho, eastern Washington, eastern Oregon, northern Utah, and Colorado; the western Great Lakes Region; and the northeastern United States region from Maine southwest to New York (McCord and Cardoza 1982; Quinn and Parker 1987) (see ''Distribution and Status'' section).

In the contiguous United States, the distribution of the lynx is associated with the southern boreal forest, comprising of subalpine coniferous forest in the West and primarily mixed coniferous/deciduous forest in the East (Aubry *et al.* 1999) (see ''Distribution and Status'' section); whereas in Canada and Alaska, lynx inhabit the classic boreal forest ecosystem known as the taiga (McCord and Cardoza 1982; Quinn and Parker 1987; Agee 1999; McKelvey *et al.* 1999b). Within these general forest types, lynx are most likely to persist in areas that receive deep snow, for which the lynx is highly adapted (Ruggiero *et al.* 1999b).

We consider lynx in the contiguous United States to be part of a larger metapopulation whose core is located in the northern boreal forest of central Canada; lynx populations emanate from this area (Buskirk *et al.* 1999b; McKelvey *et al.* 1999a, 1999b). The boreal forest extends south into the contiguous United States along the Cascade and Rocky Mountain Ranges in the West, the western Great Lakes Region, and along the Appalachian Mountain Range of the northeastern United States. At its southern margins, the boreal forest becomes naturally fragmented into patches of varying size as it transitions into other vegetation types. These southern boreal forest habitat patches are small relative to the extensive northern boreal forest of Canada and Alaska, which constitutes the majority of the lynx range.

Many of these southern boreal forest habitat patches within the contiguous United States are able to support resident populations of lynx and their primary prey species. It is likely that some of the habitat patches act as sources of lynx (recruitment is greater than mortality) that are able to disperse and potentially colonize other patches (McKelvey *et al.* 1999a). Other habitat patches act as ''sinks'' where lynx mortality is greater than recruitment and lynx are lost from the overall population. The ability of naturally dynamic habitat to support lynx populations may change as the habitat undergoes natural succession following natural or manmade disturbances (*i.e.*, fire, clearcutting). In addition, fluctuations in the prey populations may cause some habitat patches to change from being sinks to sources and vice versa. Throughout this document, we use the term ''resident population'' to refer to a group of lynx that has exhibited long-term persistence in an area based on a variety of factors, such as evidence of reproduction, successful recruitment into the breeding cohort, and maintenance of home ranges. We use the word ''transient'' to refer to a lynx moving from one place to another within suitable habitat. Another word we use throughout the document is ''dispersing,'' which refers to lynx that have left suitable habitat for various reasons, such as competition or lack of food. When dispersing lynx leave suitable habitat and enter habitats that are unlikely to sustain lynx, these individuals are considered lost from the metapopulations unless they return to boreal forest.

Lynx use large woody debris, such as downed logs and windfalls, to provide

denning sites with security and thermal cover for kittens (McCord and Cardoza 1982; Koehler 1990; Koehler and Brittell 1990; Squires and Laurion 1999; J. Organ, U.S. Fish and Wildlife Service, *in litt.* 1999). For lynx den sites, the age of the forest stand does not seem as important as the amount of downed, woody debris available (Mowat *et al.* 1999). In Washington, lynx used *Pinus contorta* (lodgepole pine), *Picea* spp. (spruce), and *Abies lasiocarpa* (subalpine fir) forests older than 200 years with an abundance of downed woody debris for denning (Koehler 1990). A den site in Wyoming was located in a mature subalpine fir/lodgepole pine forest with abundant downed logs and a high amount of horizontal cover (Squires and Laurion 1999). A lynx den site found in Maine in 1999 was located in a forest stand in *Picea rubra* (red spruce) cover type that was logged in 1930 and again in the 1980s (J. Organ, *in litt.* 1999). The site is regenerating into hardwoods and has a dense understory (J. Organ, *in litt.* 1999). The dominant feature of the Maine site was the abundance of dead and downed wood (J. Organ, *in litt.* 1999).

The size of lynx home ranges varies by the animal's gender, abundance of prey, season, and the density of lynx populations (Hatler 1988; Koehler 1990; Poole 1994; Slough and Mowat 1996; Aubry *et al.* 1999; Mowat *et al.* 1999). Documented home ranges vary from 8 to 800 square kilometers (3 to 300 square miles) (Saunders 1963; Brand *et al.* 1976; Mech 1980; Parker *et al.* 1983; Koehler and Aubry 1994; Apps 1999; Mowat *et al.* 1999; Squires and Laurion 1999). Preliminary research supports the hypothesis that lynx home ranges at the southern extent of the species' range are generally large compared to those in the northern portion of the range in Canada (Koehler and Aubry 1994; Apps 1999; Squires and Laurion 1999).

Lynx are highly specialized predators whose primary prey is the snowshoe hare (*Lepus americanus*), which has evolved to survive in areas that receive deep snow (Bittner and Rongstad 1982). Snowshoe hares use forests with dense understories that provide forage, cover to escape from predators, and protection during extreme weather (Wolfe *et al.* 1982; Monthey 1986; Hodges 1999a,1999b). Generally, earlier successional forest stages have greater understory structure than do mature forests and therefore support higher hare densities (Hodges 1999a,1999b). However, mature forests can also provide snowshoe hare habitat as openings develop in the canopy of mature forests when trees succumb to disease, fire, wind, ice, or insects, and the understory grows (Buskirk *et al.* 1999b). Lynx concentrate their hunting activities in areas where hare activity is relatively high (Koehler *et al.* 1979; Parker 1981; Ward and Krebs 1985; Major 1989; Murray *et al.* 1994; O'Donoghue *et al.* 1997, 1998a).

The association between lynx and snowshoe hare is considered a classic predator-prey relationship (Saunders 1963; van Zyll de Jong 1966; Quinn and Parker 1987). In northern Canada and Alaska, lynx populations fluctuate on approximately 10-year cycles that follow the cycles of hare populations (Elton and Nicholson 1942; Hodges 1999a, 1999b; McKelvey *et al.* 1999b). Generally, researchers believe that when hare populations are at their cyclic high, depletion of food resources exacerbated by predation cause hare populations to decline drastically (Buehler and Keith 1982; Krebs *et al.* 1995; O'Donoghue *et al.* 1997). Snowshoe hare provide the quality prey necessary to support high-density lynx populations (Brand and Keith 1979). Lynx also prey opportunistically on other small mammals and birds, particularly when hare populations decline (Nellis *et al.* 1972; Brand *et al.* 1976; McCord and Cardoza 1982; O'Donoghue 1997, 1998a). Red squirrels (*Tamiasciurus hudsonicus*) are an important alternate prey (O'Donoghue 1997;1998a; Apps 1999; Aubry *et al.* 1999). In the Yukon, lynx shifted to red squirrels when hare numbers began to decline (O'Donoghue 1998a, 1998b). However, a shift to alternate food sources may not compensate for the decrease in hares consumed (Koehler and Aubry 1994). In northern regions, when hare densities decline, the lower quality diet causes sudden decreases in the productivity of adult female lynx and decreased survival of kittens, which causes the numbers of breeding lynx to level off or decrease (Nellis *et al.* 1972; Brand *et al.* 1976; Brand and Keith 1979; Poole 1994; Slough and Mowat 1996; O'Donoghue *et al.* 1997).

Relative densities of snowshoe hares at southern latitudes are generally lower than those in the north, which has led to differing interpretations of the population dynamics of snowshoe hare populations. At southern latitudes hare populations may be—(1) noncyclic, (2) cyclic like northern populations, (3) cyclic with the high and low population numbers closer to the average population numbers, or (4) cyclic with a fluctuating periodicity (length of time between peaks and lows) (Dolbeer and Clark 1975; Wolff 1980; Buehler and Keith 1982; Brittell *et al.* 1989; Koehler 1990; Koehler and Aubry 1994; Hodges 1999b). Hodges (1999b) proposes that northern and southern hare populations have similar cyclic dynamics but that in southern areas both peak and low densities are lower than in the north. Snowshoe hares are generally associated with conifer forest cover types (Hodges 1999b). Relatively low snowshoe hare densities at southern latitudes are likely a result of the naturally patchy, transitional boreal habitat at southern latitudes that prevents hare populations from achieving densities similar to those of the expansive northern boreal forest (Wolff 1980; Buehler and Keith 1982; Koehler 1990; Koehler and Aubry 1994). Additionally, the presence of more predators and competitors of hares at southern latitudes may inhibit the potential for high-density hare populations with extreme cyclic fluctuations (Wolff 1980). If snowshoe hare populations in southern boreal forests do fluctuate (Hodges 1999b), then southern lynx populations also may be expected to fluctuate.

Therefore, lynx densities at the southern part of the range never achieve the high densities that occur in the northern boreal forest (Aubry *et al.* 1999). Comparisons between Canadian and contiguous U.S. lynx harvest returns and snowshoe hare densities over time suggest lynx numbers and snowshoe hare densities for the contiguous United States are substantially lower than those for Canadian provinces (Hodges 1999a, 1999b; McKelvey *et al.* 1999b). We conclude that historic and current lynx densities in the contiguous United States also are naturally low relative to lynx densities in the northern boreal forest.

Researchers believe cyclic increases in historic lynx harvest numbers in the contiguous United States were augmented by dispersal of transient animals from Canadian populations (Gunderson 1978; Henderson 1978; Mech 1980; McKelvey *et al.* 1999b). The opinion of some individuals and agencies is that presence of lynx in some regions of the contiguous United States, particularly the Great Lakes, is solely a consequence of dispersal from Canada (G. Meyer, Wisconsin Department of Natural Resources, *in litt.* 1998; R. Sando, Minnesota Department of Natural Resources, *in litt.* 1998). Lynx are capable of dispersing extremely long distances (Mech 1977; Brainerd 1985; Washington Department of Wildlife 1993); for example, a male was documented traveling 616 kilometers (370 miles) (Brainerd 1985). Lynx disperse primarily when snowshoe hare populations decline (Ward and Krebs 1985; Koehler and Aubry 1994;

O'Donoghue *et al.* 1997; Poole 1997). Subadult lynx disperse even when prey is abundant (Poole 1997), presumably as an innate response to establish home ranges. An extreme example of the apparent emigration of lynx from Canada to the contiguous United States is the numerous occurrences of lynx that were frequently documented in atypical habitat, such as in North Dakota, during the early 1960s and 1970s. In these years harvest returns indicated unprecedented cyclic lynx highs for the 20th century in Canada (Adams 1963; Harger 1965; Mech 1973; Gunderson 1978; Thiel 1987; McKelvey *et al.* 1999b). We believe that many of these animals were dispersing and were either lost from the population because they were in areas that are unable to support lynx or they were able to return to suitable habitat.

Distribution and Status

The complexities of lynx life-history and population dynamics, combined with a general lack of reliable historic or current lynx data for the contiguous United States, make it difficult for us to ascertain the past or present population status of lynx in the contiguous United States. Lynx population dynamics in the contiguous United States may not be the same as in the northern boreal forests of Canada and Alaska. Regarding lynx in the northern boreal forests of Canada and Alaska, we know the following—northern lynx populations undergo extreme fluctuations in response to snowshoe hare population cycles; lynx disperse when hare populations decline; lynx are capable of dispersing long distances; recruitment of young into the population seems to cease during cyclic lows of snowshoe hare populations; and lynx maintain home ranges (Mowat *et al.* 1999). We do not know the extent to which the northern lynx populations influence lynx occurrence in the contiguous United States. Because of the naturally fragmented habitat and lower density hare populations in the contiguous United States, we expect lynx in the contiguous United States to occur at naturally lower densities than in the north.

Historic lynx data in the contiguous United States are scarce and exist primarily in the form of trapping records. Many States did not differentiate between bobcats and lynx in trapping records, referring to both as ''lynxcats.'' Therefore, long-term lynx trapping data is not available for most States. Surveys designed specifically for lynx were rarely conducted, and many reports (*e.g.,* visual observations, snow tracks) of lynx were collected incidental to other activities. The reliability of many of these records is unknown; trapping records may have errors, track identification is extremely difficult, and observations may be wrong. Long-term trapping data have been used to understand population trends for various species; however, because trapper effort can change, trapping returns may not accurately reflect population trends. Data showing few lynx trapped could be a result of decreased trapper effort, not necessarily a decreased population. These factors hamper our understanding of lynx population dynamics and status in the contiguous United States and preclude us from drawing definitive conclusions about lynx population trends. Data are too incomplete to infer much beyond simple occurrence (McKelvey *et al.* 1999b) and distribution of lynx in the contiguous United States. However, despite these difficulties, trapping data is the best information available on lynx presence throughout much of its range in the contiguous United States and therefore was relied upon in our analysis.

Data that would help us determine whether resident populations of lynx existed historically or exist currently in many States are generally unavailable. Given the available data and the propensity of lynx to disperse, at this time it is impossible to determine with certainty whether reports of lynx in many States were—(1) merely dispersing animals from northern populations that were effectively lost from the metapopulation because they did not join or establish resident populations, (2) animals that were a part of a resident population that persisted for many generations, or (3) a mixture of both members of resident populations and dispersing animals.

There are several plausible explanations for a lack of lynx records, such as (1) the true absence of lynx, (2) lynx populations are at a cyclic low, (3) lack of adequate surveys, or (4) decreased trapper effort. We suspect that some areas in the contiguous United States naturally act as ''sinks'' for lynx where mortality is higher than recruitment and lynx are lost from the overall population (McKelvey *et al.* 1999a). Sink habitats are most likely those places on the periphery of the southern boreal forest in the contiguous United States where habitat becomes more fragmented and more distant from larger lynx populations.

In the following discussions, we describe available lynx data, habitat, and other elements that frame our understanding of lynx in the various regions and States where lynx have been reported within the contiguous United States.

Within the contiguous United States, the lynx range extends into different regions that are separated from each other by ecological barriers consisting of unsuitable lynx habitat. These regions are the Northeast, the Great Lakes, the Northern Rocky Mountains/Cascades, and the Southern Rocky Mountains. In general, lynx in each of these regions are associated with habitats that are southern extensions of the boreal forest (Aubry *et al.* 1999). Differences in local climate, primarily precipitation, and effects of elevation have resulted in climax forest types that differ in the eastern regions compared to the West (Buskirk *et al.* 1999b). The climax forest in the East is primarily deciduous or mixed deciduous/coniferous whereas in the West the climax forest is coniferous (Buskirk *et al.* 1999b). While the four regions of lynx range in the contiguous United States are ecologically unique and discreet, in each of these regions the lynx is associated with the southern boreal forest and, with the exception of the Southern Rockies, they are each geographically connected to the much larger population of lynx in Canada. For a more detailed description of the significance of each region within the overall U.S. population, see the ''Distinct Population Segment'' section.

Northeast Region—Based on an analysis of cover types and elevation zones containing most of the lynx occurrences, McKelvey *et al.* (1999b) determined that, at the broad scale, most lynx occurrence records in the Northeast were found within the ''Mixed Forest-Coniferous Forest-Tundra'' cover type at elevations ranging from 250 to 750 meters (820 to 2,460 feet). This habitat type in the northeast U.S. occurs along the northern Appalachian Mountain range from southeastern Quebec, western New Brunswick, and western Maine, south through northern New Hampshire. This habitat type becomes naturally more fragmented and begins to diminish to the south and west, with a disjunct segment running north-south through Vermont, an extensive patch of habitat in the Adirondacks of northern New York, and with a few more distant and isolated patches in Pennsylvania (see Figure 8.23 in McKelvey *et al.* 1999b). Within this habitat type, the highest frequency of lynx occurrences were in the *Picea rubens* (red spruce), *Abies balsamea* (balsam fir), *Acer saccharum* (sugar maple), *Betula* spp. (birch), *Fagus grandifolia* (beech) forest (McKelvey *et al.* 1999b).

The entire region south of the St. Lawrence River must be considered in

an assessment of lynx in the northeastern United States. Movement of lynx across the St. Lawrence River is believed to occur infrequently (R. Lafond, Quebec Ministry of the Environment, pers. comm. 1999); therefore, emigration from lynx populations of northern Quebec to the region south of the St. Lawrence River is limited. However, northeastern U.S. lynx and snowshoe hare habitat and populations are contiguous with those south of the St. Lawrence River in southeastern Quebec and western New Brunswick and, presumably, together constitute a metapopulation. Lynx should encounter little difficulty moving between southeastern Quebec and Maine and New Hampshire, because habitat is continuous and without barriers. In this region, we conclude the core of lynx habitat historically was found in western Maine, northern New Hampshire, southeastern Quebec, and western New Brunswick.

Harvest records from southeastern Quebec provide evidence that lynx persist in this region. Quebec instituted a lynx management plan requiring that trapping seasons for lynx be closed for 3 years during the lows in the cycles; most recently these seasons were closed during 1995, 1996, and 1997 (Environment et faune Quebec 1995). Outside of these closed seasons, harvest returns in the 1990s ranged from 100 (in 1990 and 1993) to nearly 275 (in 1998) (R. Lafond, *in litt.* 1999). In New Brunswick, the lynx has been listed as endangered since 1982; during 1996 revisions, it was categorized as a ''regionally endangered species'' (Cumberland *et al.* 1998). Although the lynx harvest season in New Brunswick has been closed, lynx were incidentally caught throughout the 1990s, evidence of the continued occurrence of lynx in New Brunswick (Cumberland *et al.* 1998).

Maine—In Maine, lynx accounts are irregular and anecdotal (McKelvey *et al.* 1999b; Maine Department of Inland Fisheries and Wildlife, *in litt.* 1997; R. Joseph, U.S. Fish and Wildlife Service, *in litt.* 1999). Twenty-eight verified records exist for Maine since 1862 (McKelvey *et al.* 1999b). Anecdotal information plus historical and recent records provide evidence of presence, reproduction, and persistence of lynx in several northern and western townships (R. Joseph, *in litt.* 1999), indicating the historical residency of lynx. Lynx had a bounty placed on them in Maine from 1832 to the closure of hunting and trapping seasons in 1967. Maine classifies lynx as a species of special concern (Matula 1997), and currently hunting or trapping seasons for lynx are closed.

Although no reliable population estimates exist, in 1994 it was suggested that 200 animals or fewer occur Statewide (Maine Department of Inland Fisheries and Wildlife 1994). Lynx tracks were detected during track surveys in the 1990s (Maine Department of Inland Fisheries and Wildlife, *in litt.* 1997, 1998). In 1999, Maine and Service biologists radio-collared six lynx, three adult males and three adult females, and recorded two sub-adults and two kittens associated with radio-collared adults. This finding established with certainty current reproduction in Maine (J. Organ, *in litt.* 1999) and indicates the existence of a resident population. However, available data are not adequate for determining either population trend (increasing or decreasing) or size.

New Hampshire—New Hampshire is the only northeastern State that maintained a record of historic lynx harvest (Orff 1985 *in* McKelvey *et al.* 1999b; see Figure 8.1 *in* McKelvey *et al.* 1999b). Lynx were intermittently bountied in New Hampshire until 1965. Most of the lynx harvest occurred in the 1930s, ranging from 1 to 20 per year. Between 1940 and 1964, lynx harvests were lower, ranging from 0 to 3 lynx being caught per year. For 11 years, the harvest was zero (McKelvey *et al.* 1999b). The trapping season was closed in 1964 in response to apparent declines in lynx abundance reflected in harvest returns (Siegler 1971; Silver 1974; Litvaitis *et al.* 1991). Since 1980, the lynx has been listed as an endangered species by the New Hampshire Department of Fish and Game. Winter track surveys in 1986 in portions of the White Mountain National Forest did not detect lynx (Litvaitis *et al.* 1991). Litvaitis *et al.* (1991) hypothesized that lynx were extirpated from New Hampshire as increasing agriculture and timber harvesting in the 1970s precluded them from dispersing into the State from southeastern Quebec. Only two reports of lynx in New Hampshire exist for the 1990s (M. Amaral, U.S. Fish and Wildlife Service, *in litt.* 1999). Although lynx reports are scarce, to our knowledge, no lynx surveys have been completed in New Hampshire in recent years. Therefore, we suspect that lynx are present in New Hampshire because habitat remains contiguous with Maine.

Vermont—In Vermont, only four verified records of historic lynx occurrence exist (McKelvey *et al.* 1999b). In the mid-1900s, it was reported that Vermont had not had a documented breeding population of lynx for several decades (Osgood 1938 *in* Vermont Department of Fish and Wildlife 1987). In fact, we have no evidence of a breeding population ever occurring in Vermont. Since 1972, the lynx has been listed by the State as endangered. The last verified occurrence was from 1968, with periodic reports since then. Vermont naturally supports less lynx habitat than we previously presumed, based on analyses by McKelvey *et al.* (1999b). Furthermore, lynx habitat in Vermont is somewhat isolated from that in New Hampshire. The State of Vermont currently considers lynx to be extirpated (A. Elser, Vermont Department of Fish and Wildlife, *in litt.* 1998). Therefore, we conclude that lynx occurrence in Vermont is poorly documented, and, based upon the limited extent and dispersed nature of suitable habitat, lynx were probably never abundant or persistent over time. Currently, lynx are not thought to occur in Vermont.

New York—Historically, lynx reportedly occurred in most northern regions of New York, particularly in the Adirondack Mountains and the Catskill Mountains (McKelvey *et al.* 1999b; K. Gustafson, pers. comm. 1994). Miller (1899 *in* Brocke 1982) believed that, by the 1880s, the population was approaching extirpation. McKelvey *et al.* (1999b) found 23 verified lynx occurrences since 1900, primarily from the Adirondack Mountains. The most recent verified record was from 1973 (McKelvey *et al.* 1999b). Historically, the Adirondacks apparently supported lynx habitat, although it was isolated from habitats and lynx populations to the north.

An effort to reintroduce lynx into the Adirondack Mountains occurred during 1988–1990 (Brocke *et al.* 1990; D. Major, U.S. Fish and Wildlife Service, pers. comm. 1998), but the reintroduction is believed to have failed. A collared lynx from the reintroduction effort was found near Ottawa, Ontario, Canada (M. Amaral, U.S. Fish and Wildlife Service, pers. comm. 1997) and another as far away as northern New Jersey (K. Gustafson, New Hampshire Fish and Game Department, pers. comm. 2000). No verified occurrences in New York have been reported recently. In New York, lynx are legally classified as a small game species with a closed season. We conclude the lynx is extirpated from New York.

Pennsylvania/Massachusetts—In the proposed rule, Pennsylvania and Massachusetts were considered to be a part of the historic range of lynx. However, the inherent isolation and small sizes of habitat patches both currently and historically, combined with the few accounts of lynx occurrence in these States, led us to

conclude that lynx were merely dispersing animals in these States (J. Belfonti, The Nature Conservancy, *in litt.* 1994). Without the habitat and prey to support lynx, we concluded that these animals were lost from the gene pool and that Pennsylvania and Massachusetts were not within the historic range of lynx.

In summary, we have firm documentation that lynx occur in Maine and that they are reproducing. We conclude that a resident lynx population historically occurred and currently occurs in Maine. Lynx historically occurred in New Hampshire, but recent records of lynx occurrence in New Hampshire are rare. Suitable habitat exists contiguous to Maine. Historically, Vermont and New York have had relatively few records of lynx and none exist from the 1990s, with the exception of animals introduced into New York. It is possible that lynx have been extirpated from New Hampshire, Vermont, and New York. We no longer include Pennsylvania and Massachusetts within the historic range of lynx because these States are isolated from resident populations and lack suitable habitat. Therefore, we concluded that the low number of lynx occurrence records represented dispersing animals that were likely lost from the population.

We conclude, based on documentation of lynx reproduction and individual animals in Maine, the substantive lynx harvest in southeastern Quebec, and the connectivity of boreal forest south of the St. Lawrence River in Quebec, New Brunswick, Maine, and New Hampshire, that in the Northeast a population of lynx continues to exist in the core of the region in the north; however, the range appears to have retracted northward. Connectivity with lynx populations north of the St. Lawrence River in Canada has been reduced from historic levels because of development along the St. Lawrence River and ice breaking to allow year-round shipping.

Great Lakes Region—The majority of lynx occurrence records in the Great Lakes Region are associated with the ''mixed deciduous-coniferous forest'' type (McKelvey *et al.* 1999b). Within this general forest type, the highest frequency of lynx occurrences were in the *Acer saccharum* (sugar maple), *Tilia* spp. (basswood), *Pinus banksiana* (jack pine), *P. strobus* (white pine), and *P. resinosa* (red pine) forest types (McKelvey *et al.* 1999b). These types are found primarily in northeastern Minnesota, northern Wisconsin, and the western portion of Michigan's upper peninsula.

Although the mixed deciduous-coniferous forest covers an extensive area in this region, we consider much of this area to be marginal habitat for lynx because it is a transitional forest type at the edge of the snowshoe hare range. Habitat at the edge of hare range supports lower hare densities (Buehler and Keith 1982) that may not be sufficient to support lynx reproduction. Furthermore, snow depths within appropriate habitat that allow lynx a competitive advantage over other carnivores (*i.e.,* coyotes (*Canis latrans*)) occur only in limited areas in northeastern Minnesota, extreme northern Wisconsin, and Michigan's upper peninsula.

The historic and current status of lynx in the Great Lakes Region is uncertain. Minnesota has a substantial number of lynx reports, primarily trapping records (McKelvey *et al.* 1999b), as expected because of the connectivity of the boreal forest with that of Ontario, Canada, where lynx occur. Wisconsin and Michigan have substantially fewer records of lynx (McKelvey *et al.* 1999b). Researchers have debated whether lynx in this region are simply dispersing lynx emigrating from Canada, are members of a resident population, or are a combination of a resident population and dispersing individuals (McKelvey *et al.* 1999b; R. Sando, Minnesota Department of Natural Resources, *in litt.* 1998). In recent decades, lynx dynamics in the Great Lakes appear to have been driven by immigration because lynx occurrence records did not show a response to local cycles of hare abundance (McKelvey *et al.* 1999b), as would have been expected of a resident lynx population. Available information, does not indicate that resident populations exist, but it does indicate that recent cyclic highs in the Great Lakes lynx data are at least partially Canadian in origin (McKelvey *et al.* 1999b).

Minnesota—The majority of lynx occurrence records are from the northeastern portion of the State; however, dispersing lynx have been found throughout Minnesota outside of typical lynx habitat (Gunderson 1978; Mech 1980; McKelvey *et al.* 1999b). Until 1965, lynx had a bounty placed on them in Minnesota. In 1976, the lynx was classified as a game species, and harvest seasons were established (M. DonCarlos, Minnesota Department of Natural Resources, *in litt.* 1994). Harvest and bounty records for Minnesota are available since 1930. Approximate 10-year cycles are apparent in the data, with highs in the lynx cycle in 1940, 1952, 1962, and 1973 (Henderson 1978; McKelvey *et al.* 1999b). During a 47-year period (1930–1976), the Minnesota lynx harvest was substantial, ranging from 0 to 400 per year (Henderson 1978). These harvest returns for Minnesota are believed to be influenced by influxes from Canada, particularly in recent decades (Henderson 1978; Mech 1980; McKelvey *et al.* 1999b; M. DonCarlos, *in litt.* 1994). When an anticipated lynx cyclic high for the early 1980s did not occur, the harvest season was closed in 1984 (M. DonCarlos, *in litt.* 1994) and remains closed today. Outside of harvest data, 76 verified lynx records exist for Minnesota (McKelvey *et al.* 1999b).

With available data, we cannot verify whether a resident population existed historically in Minnesota. Reproduction and maintenance of home ranges by lynx was documented in the early 1970s (Mech 1973, 1980), which may be evidence of the existence of a resident population. The early 1970s also were a period when the second highest lynx harvest returns in the 20th century occurred throughout Canada. High numbers of lynx trapped in Minnesota during this period were likely due in part to immigrants from Canada (McKelvey *et al.* 1999b). Lynx were consistently trapped over 40 years during cyclic lows, which may indicate that a small resident population occurred historically.

Current information is insufficient to determine whether a resident population of lynx exists in Minnesota and, if so, whether there has been a decline in numbers. In northeastern Minnesota, where deep snow accumulates, suitable lynx and snowshoe hare habitat is likely present. Much of this area is protected as designated wilderness, including the Boundary Waters Canoe Area. Furthermore, these habitats are contiguous with boreal forest in southern Ontario. Trapping records for Ontario districts adjacent to the Minnesota border demonstrate consistent occurrence of lynx in the area over the past 10 years (N. Dawson, Ontario Ministry of Natural Resources, *in litt.* 1999). The only recent verified records of lynx in Minnesota were two lynx in 1992 and one in 1993 (M. DonCarlos, *in litt.* 1994). However, no lynx surveys or research have been conducted in Minnesota to document presence, absence, or population trend. A lynx survey was initiated this year as a joint effort by the Service, the Forest Service and the University of Minnesota. Although habitat and prey conditions appear suitable in the northeastern portion of the State, we have received no information that

substantiates presence of a resident lynx population currently in Minnesota.

Wisconsin—Thiel (1987) concluded that, historically, Wisconsin did not support a permanent, self-sustaining lynx population; rather, lynx presence was associated with cyclic lynx population fluctuations in Canada resulting in increased dispersal. Verified reports of lynx in Wisconsin are few (29 records from 1870 to 1992) (McKelvey *et al.* 1999b); over half of these reports are associated with unprecedented cyclic highs that occurred throughout Canada in the early 1960s and 1970s. Between 1948 and 1956, 19 lynx were harvested in the State; annual harvests were low, ranging from 0 (in 1954) to 4 (in 1952) (Wisconsin Department of Natural Resources 1993). In 1992, two lynx mortalities were reported in Wisconsin (Wydeven 1993; C. Pils, *in litt.* 1994). Lynx tracks have been detected during wolf surveys in the 1990s (Wydeven 1998).

A bounty on lynx existed until 1957. Lynx were placed on the protected species list in 1957 and were classified as State endangered in 1972 (C. Pils, *in litt.* 1994). Because of the lack of breeding records, Wisconsin reclassified the lynx as a ''protected'' species with a closed season (G. Meyer, *in litt.* 1998).

We have no evidence to determine whether a lynx population resided in Wisconsin historically or resides currently; however, Wisconsin Department of Natural Resources suggested that a breeding population may have existed in the State prior to the 1900s (G. Meyer, *in litt.* 1998). Most of northern Wisconsin forests are mixed deciduous-coniferous forest (McKelvey 1999b). We believe this transitional forest type at the edge of the snowshoe hare range may be unable to support hare densities sufficient to sustain a resident lynx population. An exception may be in extreme northern portions of Wisconsin, where more suitable habitat exists and deep snows accumulate.

Michigan—In Michigan, historical reports suggest that the Canada lynx was resident and widespread throughout the upper and lower peninsula in the 19th century (Harger 1965). However, records verifying these accounts are scarce; 44 verified records exist from the mid 1800s until 1983 (McKelvey *et al.* 1999b). Lynx were believed extirpated from Michigan's lower peninsula in 1928, and by 1938 they were considered rare or extinct throughout the State (Harger 1965). Lynx persisted on Isle Royale in Lake Superior into the late 1970s (Peterson 1977 *in* Baker 1983; M. Romanski, Isle Royale National Park, *in litt.* 1998). Sixteen of 44 verified lynx records for Michigan are associated with an extreme cyclic high in Canada in the early 1960s (Harger 1965; McKelvey *et al.* 1999b). Only two verified records of lynx exist for Michigan (from the upper peninsula) since the 1960s (McKelvey *et al.* 1999b; G. Burgoyne, Jr., Michigan Department of Natural Resources, *in litt.* 1998). Michigan listed the lynx as ''rare'' in 1974; in 1983 it was listed as threatened and in 1987, its status was upgraded to endangered (G. Burgoyne, Jr., *in litt.* 1998). Although suitable habitat and snow depths likely exist in Michigan's upper peninsula, too few records exist to substantiate either the historic or current presence of a resident lynx population in Michigan.

In summary, using the best available information we cannot determine whether resident lynx populations occur currently or historically in the Great Lakes Region. Within this region, we consider northeastern Minnesota to be most likely to support a resident lynx population based on the presence of boreal forest that is contiguous with that of Ontario, where lynx are known to exist, and the number of lynx records from this area. We suspect that there may have been a small resident population historically in northeastern Minnesota; however, we recognize the lack of evidence to clearly support either the past or current existence of a resident population in Minnesota. Because of the paucity of records from Wisconsin and Michigan and the presence of habitat that we think is marginal for lynx, we suspect records of lynx in Wisconsin and Michigan most likely are transient animals that are dispersing, rather than individuals from resident populations. Accurate mapping of lynx habitat in the Great Lakes Region would enable us to define where to expect resident lynx to occur in this region.

Northern Rocky Mountain/Cascades Region—In this region, the majority of lynx occurrences are associated at a broad scale with the ''Rocky Mountain Conifer Forest''; within this type, most of the occurrences are in moist *Pseudotsuga menziesii* (Douglas fir) and western spruce/fir forests (McKelvey *et al.* 1999b). Most of the lynx occurrences are in the 1,500–2,000 meters (4,920–6,560 feet) elevation class (McKelvey *et al.* 1999b). These habitats are found in the Rocky Mountains of Montana, Idaho, eastern Washington, and Utah and the Cascade Mountains in Washington and Oregon. The majority of verified lynx occurrences in the U.S. and the confirmed presence of resident populations are from this region. The boreal forest of Washington, Montana, and Idaho is contiguous with that in adjacent British Columbia and Alberta, Canada.

Washington—In Washington, resident lynx populations were historically found in the northeast and north-central regions and along the east slope of the Cascade Mountains (Washington Department of Wildlife 1993). Records of lynx exist from the Mount Rainier National Park area in the central Cascades, south in the Cascades nearly to the Oregon border on Mount Adams, and in the Blue Mountains in southeastern Washington (Taylor and Shaw 1927 *in* Koehler and Aubry 1994; Dalquest 1948; Washington Department of Natural Resources 1996a). Washington has a long record of verified lynx occurrences over the past century (McKelvey *et al.* 1999b).

Trapping data kept since 1961 reflect cyclic patterns (McKelvey *et al.* 1999b). The largest harvests were taken in 1969–1970 (31 lynx) and 1976–1977 (39 lynx) (Washington Department of Wildlife 1993). Trapping restrictions were implemented in 1977–1978, and lynx hunting and trapping seasons were closed in 1991 (Washington Department of Wildlife 1993). In the years 1987–1989, immediately prior to the season being closed, harvest increased substantially despite restrictive quotas and shortened seasons (see Figure 8.7 *in* McKelvey *et al.* 1999b). We suspect that this increase in trapped animals may have represented a cyclic increase, as was evident in harvest data from British Columbia during this time frame (see Figure 8.6 *in* McKelvey *et al.* 1999b; M. Badry, British Columbia Ministry of Environment, *in litt.* 1999). Lynx harvest data from British Columbia demonstrate cyclic fluctuations for the past 13 seasons, as well as the continued presence of lynx, in regions contiguous with Washington (M. Badry, *in litt.* 1999).

Established snow track survey routes are conducted to detect the presence of lynx within the six designated ''Lynx Management Zones'' across the north-central part of Washington (Richardson 1999; Washington Department of Natural Resources 1996a). Results of these surveys show that currently, lynx occupy four of these zones—Okanogan, Kettle Range, Little Pend Oreille, and Salmo Priest—but have not documented lynx presence in the Wedge or Vulcan Mountain, the two smallest zones delineated in Washington (Richardson 1999). Recent preliminary DNA survey results indicate the presence of lynx in the southern and central Cascades in Washington (Weaver and Amato 1999), and recent records of lynx reproduction also exist for Washington in the northern Cascades (Koehler 1990;

Friends of the Loomis Forest, *in litt.* 1999).

Although Washington has the best lynx data in the contiguous U.S., we cannot identify population changes or trend from this data. It is clear that resident lynx populations exist in Washington. The lynx population in Washington has been roughly estimated at 96–191 (Washington Department of Wildlife 1993) and 225 individuals (Brittell *et al.* 1989). However, these population estimates may be high because of assumed similar habitat suitability and lynx densities across the range, which is not the case (Washington Department of Wildlife 1993). Since 1993, the lynx has been listed as a State threatened species (Washington Department of Wildlife 1993). Richardson (1999) recommended retaining the lynx as a threatened species in the State because the status of the lynx had not changed appreciably in Washington.

Oregon—Historic lynx records exist from nine counties in Oregon (Bailey 1936; Nellis 1971). McKelvey (1999b) documented 12 verified lynx records for Oregon in the past century. Based on the time frames when collected and locations in atypical habitat, some of these records likely were dispersing transient individuals. Recent observations of lynx have been reported from the Cascades and the Blue Mountains in northeastern Oregon (Csuti *et al.* 1997; R. Anderson, Wallowa-Whitman National Forest, *in litt.* 1998), and preliminary DNA survey results also suggest the presence of lynx in the Cascade Range in Oregon (Weaver and Amato 1999). Lynx have rarely been reported harvested in Oregon, although the season for lynx is essentially open because the State does not regulate lynx harvest, however we do not believe any lynx have been harvested because there are no records of lynx trapping or pelts collected in Oregon (C. Carson, pers. comm., USFWS, Office of Management Authority (OMA), 2000). Based on the limited available information, we cannot substantiate the historic or current presence of a resident lynx population in Oregon.

Idaho—According to Rust (1946), lynx were not abundant but were distributed throughout northern Idaho in the early 1940s, occurring in 8 of the 10 northern and north-central counties. McKelvey *et al.* (1999b) located a number of lynx specimen records from Idaho collected during the early 1900s. Harvest records for Idaho are unreliable because no distinction was made between lynx and bobcats until 1982 when Idaho Department of Fish and Game initiated a mandatory pelt tagging program. Anecdotal reports compiled by Lewis and Wenger (1998) indicated the occurrence of lynx in atypical habitats. Based on the time frames when collected, these records likely were dispersing transient individuals. Between 1960 and 1991, 35 verified records exist for Idaho, with 13 of these from 1982 to 1991 (McKelvey *et al.* 1999b). From 1991 until recently, there had been no verified records of lynx from Idaho (McKelvey *et al.* 1999b); however, until the past year, no lynx surveys were conducted in Idaho. Preliminary results from recent DNA surveys suggest the presence of lynx in northern and north-central Idaho (J. Weaver, Wildlife Conservation Society, *in litt.* 1999).

Prior to 1977, the species was considered a predator, subject to unrestricted harvest with no closed season and no bag limit. In 1990, in response to concern over the status of lynx in Idaho, the Idaho Department of Fish and Game instituted a Statewide harvest quota of three lynx per year. In 1997/1998, Idaho closed the lynx trapping/hunting season because no lynx had been captured in several years.

Although records of lynx in Idaho are relatively common and boreal forest habitat is contiguous with adjacent States and Canada where lynx populations are known to exist, we cannot clearly substantiate either the historic or current presence of resident lynx populations in Idaho, nor can we identify population changes or trend with the available information.

Montana—In Montana, numerous historic and current lynx records exist throughout the Rocky Mountain Conifer Forest in the western part of the State (McKelvey *et al.* 1999b; P. Graham, Montana Department of Fish, Wildlife, and Parks, *in litt.* 1998). Reproduction has been documented (Brainerd 1985). Many records exist of lynx harvested in eastern Montana's Great Plains Region in the 1960s (Hoffman *et al.* 1969); however, we suspect these were dispersing transient animals associated with cyclic highs in northern lynx populations during the early 1960s.

Since 1950, Montana lynx harvest records exhibit cycles (McKelvey *et al.* 1999b), although accurate harvest records were not kept until 1977 when lynx were classified as a furbearer. The harvest data reflect the extreme highs of the early 1960s and 1970s that were documented throughout Canada. Since 1977, Montana's largest lynx harvest occurred in both 1979 and 1984 when 62 lynx were taken in each season (McKelvey *et al.* 1999b; B. Giddings, Montana Department of Fish, Wildlife, and Parks, *in litt.* 1994). These harvest returns were substantially lower than those recorded in the early 1960s and 1970s, leading to concern that lynx populations in Montana were at or near their lowest levels in the past several decades (Hash 1990; S. Conn, Montana Trappers Association, *in litt.* 1990). The State established quotas that were incrementally decreased from 135 in 1982 down to a Statewide quota of 2 beginning in 1991 (B. Giddings, *in litt.* 1994). In 1999, Montana's lynx harvest season was closed.

Harvest records, winter track surveys conducted since 1990/1991, and trapper logbooks, led Montana Department of Fish, Wildlife, and Parks to conclude that the State's lynx population has recovered and is distributed throughout what it determined to be ''predicted lynx habitat'' (P. Graham, *in litt.* 1998). Montana Department of Fish, Wildlife, and Parks estimated the lynx population as 1,040 lynx in 1994 (B. Giddings, *in litt.* 1994). This estimate was determined using a habitat area/density index, which is likely inaccurate, given broad assumptions regarding habitat suitability and lynx distribution.

We conclude that a resident population of lynx is distributed throughout its historic range in Montana. However, available data are not sufficient to determine either population trend (increasing or decreasing) or estimates of population size. Furthermore, we now question the interpretations we made in the proposed rule as well as those made by the other sources that harvest returns in the 1980s and 1990s reflected substantially reduced populations (see ''Factor B'' in the ''Summary of Factors'' section). We now know that harvest returns in the early 1960s and 1970s represented unprecedented cyclic highs for the 20th century (McKelvey *et al.* 1999b). Therefore, it is possible that lower lynx harvest returns in the 1980s were not unusual compared to harvest returns prior to 1960. Lynx harvest returns for British Columbia and Alberta since 1919 demonstrate the variability of cyclic amplitudes throughout the past century (McKelvey *et al.* 1999b) and lead us to suspect that cycles in Montana were similar.

Wyoming—Most historical and recent records of lynx in Wyoming are from the northwestern mountain ranges (Reeve *et al.* 1986; McKelvey *et al.* 1999b). McKelvey *et al.* (1999b) found only 30 verified records Statewide since 1856. Documented reports of lynx in Yellowstone National Park are rare (S. Consolo-Murphy, Yellowstone National Park, pers. comm. 1994); no recent verified records exist from the Greater Yellowstone Ecosystem (McKelvey *et al.*

1999b). However, no lynx surveys have been conducted in this area. Elsewhere, lynx have been reported from the Big Horn Mountains in north-central Wyoming (Reeve *et al.* 1986; McKelvey *et al.* 1999b). Until 1957, lynx had bounties place on them in the State. Since 1973, the lynx has been listed as a protected non-game species and harvest was closed. Because of connectivity with lynx populations and habitat in Montana, we suspect that lynx were historically resident in northwestern Wyoming.

In 1996 the Wyoming Game and Fish Department began a lynx study in west-central Wyoming. Production of kittens was documented in 1998 (Squires and Laurion 1999). This may indicate the presence of a resident population in this local area (Ruggiero *et al.* 1999b). However, using available information we are unable to determine status or trend of lynx throughout Wyoming.

Utah—There are few historic reports of lynx in Utah (McKay 1991; McKelvey *et al.* 1999b). Nearly all the reliable lynx reports are from the Uinta Mountain Range along the Wyoming border (McKay 1991). McKelvey *et al.* (1999b) found only 10 verified records of lynx in Utah since 1916; no verified records exist since 1991. However, recent unverified reports of lynx in the Uintas persist (Bates, Utah Department of Wildlife, pers. comm. 1999). The lynx is listed as a State sensitive species with closed harvest seasons. Based on the limited available information we cannot substantiate either the historic or current presence of a resident lynx population in Utah.

In summary, we believe the Northern Rockies/Cascades Region supports the most viable resident lynx populations in the contiguous U.S., while recognizing that, at best, lynx in the contiguous U.S. are naturally rare. Strong evidence exists to support the presence of resident lynx populations distributed throughout much of the forest types considered lynx habitat in Montana and Washington. We expect that resident lynx populations exist in contiguous habitats in Idaho and northwestern Wyoming. We believe that lynx have always occurred intermittently in Oregon and Utah, although we cannot determine the historic or current presence of resident populations in either of these States. Recently initiated DNA surveys in all the States within this region should further refine our understanding of the status of lynx in this region.

Southern Rockies

Colorado represents the extreme southern edge of the range of the lynx. The southern boreal forest of Colorado and southeastern Wyoming is isolated from boreal forest in Utah and northwestern Wyoming by the Green River Valley and the Wyoming basin (Findley and Anderson 1956 in McKelvey *et al.* 1999b). These habitats likely act as a barrier that reduces or precludes opportunities for immigration and emigration from the Northern Rocky Mountains/Cascades Region and Canada, effectively isolating lynx in the southern Rocky Mountains in Colorado and southeastern Wyoming (Halfpenny *et al.* 1982; Koehler and Aubry 1994). A majority of the lynx occurrence records in Colorado and southeastern Wyoming, are associated with the ''Rocky Mountain Conifer Forest'' type. The occurrences in the Southern Rockies were generally at higher elevations (1,250 to over 3,750 meters (4,100–12,300 feet)) than were all other occurrences in the West (McKelvey *et al.* 1999b).

Colorado—The montane and subalpine forest ecosystems in Colorado are naturally highly fragmented (Thompson 1994), which we believe limits the size of lynx populations. A total of 78 lynx reports rated as positive (22) or probable (56) exist in State records since the late 1800s (J. Mumma, Colorado Division of Wildlife, *in litt.* 1998); although McKelvey *et al.* (1999b) considered only 17 of these records ''verified.'' The last verified lynx specimens were taken in 1974 (Halfpenny *et al.* 1982). No verified records of lynx exist since 1974; however, extensive survey efforts have resulted in reports of lynx tracks (Halfpenny and Miller 1981; Thompson and Halfpenny 1989; Anderson 1990; Thompson and Halfpenny 1991; Andrews 1992; Carney 1993; Fitzgerald 1994; Colorado Division of Wildlife *et al.* 1997). The lynx has been listed as a State endangered species since 1976 (Colorado Division of Wildlife *et al.* 1997) and harvest of the species is currently closed.

Few, if any, native lynx continue to exist in Colorado (J. Mumma, *in litt.* 1998). As a result, in 1997, the Colorado Division of Wildlife, in cooperation with numerous government and private entities, began a program to introduce lynx from Canada and Alaska into Colorado in an attempt to reestablish a viable lynx population. Forty-one lynx were released into the wild beginning in early spring 1999. It is too early to predict the success of this effort.

Wyoming—''Rocky Mountain Conifer Forest'' in southeastern Wyoming is contiguous with that of Colorado. None of the reports of lynx in the Medicine Bow and Laramie Ranges in southeastern Wyoming have been confirmed (Reeve *et al.* 1986). However, McKelvey *et al.* (1999b) found two specimens collected prior to 1900 in southeastern Wyoming. There is a general lack of information in Wyoming, particularly southeastern Wyoming, that limits our ability to assess historical and current status of the lynx.

In summary, we believe that a resident lynx population historically occurred in the Southern Rockies Region in both Colorado and southeastern Wyoming, based on the records of lynx in Colorado and the persistence of contiguous habitat in southeastern Wyoming with the Colorado habitat. This resident population may now be extirpated.

Other Reports or Sightings—Lynx observations in Nevada, North Dakota, South Dakota, Iowa, Nebraska, Indiana, Ohio, and Virginia are considered individuals dispersing subsequent to periods of cyclic high lynx numbers in Canada (Hall and Kelson 1959; Burt 1954 *in* Brocke 1982; McKelvey *et al.* 1999b; S. Johnson, Indiana Department of Natural Resources, *in litt.* 1994; P. Jones, Ohio Department of Natural Resources, *in litt.* 1994; W. Jobman, U.S. Fish and Wildlife Service, *in litt.* 1997; Smithsonian Institute, *in litt.* 1998). During the early 1960s, lynx moved into the Great Plains and the Midwest Region of the U.S. associated with an unprecedented cyclic high in Canada (Gunderson 1978; Mech 1980; DeStefano 1987; South Dakota Natural Heritage Program, *in litt.* 1994). These records are outside of the southern boreal forests where most lynx occurrences are found (McKelvey *et al.* 1999b). We conclude that these unsuitable habitats are unable to sustain lynx and that these records represent dispersing individuals that are lost from the metapopulation unless they return to boreal forest. We do not consider these States to be within the contiguous U.S. range of lynx.

Distinct Population Segment

For a species to be listable under the Endangered Species Act (Act), it must be a ''species'' as defined in the Act. The Act defines ''species'' as a species, subspecies, or Distinct Population Segment (DPS) of a vertebrate species. On February 7, 1996, the Service and the National Marine Fisheries Service published final policy guidance concerning recognition of Distinct Vertebrate Population Segments for consideration under the Act (61 FR 4722). We follow the Vertebrate Population Policy when considering listing a vertebrate species as endangered or threatened in only a

portion of its range. In developing the proposed rule and final rule for the lynx, we used the Vertebrate Population Policy to evaluate whether the lynx population in the contiguous United States constitutes a DPS under the Act.

Under the Vertebrate Population Policy, two elements, discreteness and significance, must be considered to determine whether a species' population meets the definition of a DPS. If a population is discrete and significant, its status is evaluated using the five listing factors described in section 4(a)(1) of the Act to determine if it meets the definition of either threatened or endangered.

According to the Vertebrate Population Policy, a species' population can be considered discrete from the remainder of the taxon if it satisfies either one of the following conditions—(1) ''it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors,'' or (2) ''it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist.''

We have determined that resident populations of lynx existed historically and currently exist within the contiguous United States (see ''Status'' section). In Canada, management of forest lands and conservation of wildlife habitat varies depending on Provincial regulations. Canada has no overarching forest practices legislation, such as the United States National Forest Management Act, governing management of national lands and/or providing for consideration of wildlife habitat requirements. Additionally, in Canada, lynx harvest regulations, such as length of season and quotas, vary, being regulated by individual Provinces or, in some cases, individual trapping districts. Therefore, we conclude that the contiguous United States population of the lynx is discrete based on the international boundary between Canada and the contiguous United States due to differences in management of lynx and lynx habitat.

According to the Vertebrate Population Policy, a population segment can be considered significant based on considerations that include, but are not limited to, the following—(1) ''Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon,'' (2) ''Evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon,'' (3) ''Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range,'' and (4) ''Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.''

Lynx in the contiguous United States may be considered biologically and ecologically significant simply because of the climatic, vegetational, and ecological differences between lynx habitat in the contiguous United States and that in northern latitudes in Canada and Alaska (Buskirk *et al.* 1999b). In the contiguous United States, the distribution of lynx is associated with the mosaic of southern boreal forest and subalpine coniferous forest in the West and southern boreal forest/hardwoods in the East; whereas in Canada and Alaska lynx inhabit the classic boreal forest ecosystem known as the taiga (McCord and Cardoza 1982; Quinn and Parker 1987; Agee 1999; McKelvey *et al.* 1999b) (see ''Background'' and ''Distribution and Status'' sections).

Lynx and snowshoe hare population dynamics in portions of the contiguous United States are different from those in northern Canada. We conclude that historic and current lynx and snowshoe hare densities in the contiguous United States are naturally low relative to lynx and hare densities in the northern boreal forest (see ''Background'' and ''Distribution and Status'' sections). Because the southern boreal forest in the contiguous United States is naturally highly fragmented and contains more hare predators, it is unable to support the extremely high peak densities of snowshoe hares as in the northern boreal forest of Canada and Alaska (Wolff 1980; Buehler and Keith 1982; Hodges 1999a,1999b; McKelvey 1999a). Therefore, lynx densities at the southern part of the range never achieve the high densities of the northern boreal forest (Aubry 1999).

After review and consideration of lynx status and management in the contiguous United States and Canada, and lynx and snowshoe hare life-history, habitat, and population dynamics, we have determined that the lynx population in the contiguous United States is discrete and significant and, therefore, qualifies as a DPS to be considered for listing under the Act.

Within the contiguous United States population segment, the range of the lynx is divided regionally by ecological barriers of unsuitable lynx habitat. These regions are— (1) the Northeastern Region, including Maine, New Hampshire, Vermont, and New York; (2) the Great Lakes Region, including Michigan, Wisconsin, and Minnesota; (3) the Northern Rocky Mountain/Cascades Region, including Washington, Oregon, Idaho, Montana, northwestern Wyoming, and Utah; and (4) the Southern Rocky Mountains Region, including Colorado and southeastern Wyoming.

McKelvey *et al.* (1999b) illustrate lynx population dynamics emanating from central Canada to the periphery. The authors use Canadian and United States lynx trapping and occurrence data to display lagged synchronous cycles (cycles with similar peaks and lows in population size) (McKelvey *et al.* 1999b), providing evidence of the interconnectedness of lynx population dynamics in the contiguous United States with lynx population dynamics in the Canadian boreal forest. All of the different regions that support lynx within the contiguous United States are directly contiguous with lynx habitat or lynx populations in Canada, except the Southern Rockies, although the connectivity of the Northeast Region is largely limited to areas south of the St. Lawrence Seaway: southern Quebec and New Brunswick.

Within the contiguous United States, all four regions are isolated from each other by expanses of unsuitable habitats that limit or preclude lynx movement between these regions. Unsuitable habitat along the southeastern Great Lakes isolates the Northeastern and Great Lakes regions; the Great Plains isolates the eastern regions from the West. Although there may be some limited potential for dispersal between the Southern and Northern Rockies, lynx in the Southern Rockies are considered to be isolated from lynx populations in the Northern Rockies/Cascades Region by the Green River basin and the Red Desert. We have no expectation that lynx in these individual regions influence the presence or persistence of lynx within another region of the contiguous United States. Therefore, we believe each of these four regions are discrete.

When considering whether a population meets the significance test, policy requires us to evaluate the population as it relates to the entire range of the taxon. In the case of the lynx, the range of the taxon is extensive and exists mainly in Canada and Alaska. When we evaluated the significance of the small discrete regions in the contiguous United States to the entire range of the taxon in North America, we determined that none of these regions individually constitute significantly unique or unusual ecological settings; therefore, they could not be separated from the contiguous U.S. DPS as a whole. Within all four regions of the

contiguous United States, the distribution of the lynx is associated with the southern boreal forest.

We have concluded that none of the four regions, individually, fulfill both the discreteness and significance criteria as provided under the policy. Therefore, we conclude that the listable entity is the contiguous United States DPS of the lynx, consisting of the Northeast, the Great Lakes, the Northern Rockies/Cascades, and the Southern Rockies regions.

Within the contiguous United States, the relative importance of each region to the persistence of the DPS varies. The Northern Rockies/Cascades Region supports the largest amount of lynx habitat and has the strongest evidence of persistent occurrence of resident lynx populations, both historically and currently. In the Northeast (where resident lynx populations continue to persist) and Southern Rockies regions, the amount of lynx habitat is naturally limited and does not contribute substantially to the persistence of the contiguous United States DPS. Much of the habitat in the Great Lakes Region is naturally marginal and may not support prey densities sufficient to sustain lynx populations. As such, the Great Lakes Region does not currently contribute substantially to the persistence of the contiguous United States DPS. Collectively, the Northeast, Great Lakes, and Southern Rockies do not constitute a significant portion of the range of the DPS. We conclude the Northern Rockies/Cascades Region is the primary region necessary to support the continued long-term existence of the contiguous United States DPS. However, the role that each region plays in the long-term conservation of the species will be explored further in recovery planning for the species.

Previous Federal Action

The lynx was added to Appendix II of the Convention on International Trade in Endangered Species (CITES) of Wild Flora and Fauna in 1977. The species was classified as a category 2 candidate species in the December 30, 1982, Vertebrate Notice of Review (47 FR 58454), meaning that more information was necessary to determine whether the species' status was declining. In response to a petition received on August 22, 1991, we published a notice of a 90-day petition finding on October 6, 1992, that we did not have substantial information to indicate that listing the North Cascades population of the lynx as endangered may be warranted (57 FR 46007). A lawsuit was filed challenging the October 6, 1992, finding. On July 9, 1993, we published a notice indicating that we had reviewed the North Cascades 90-day petition after receiving new information and again found that we did not have substantial information to indicate that listing the population may be warranted (58 FR 36924). In a settlement agreement dated November 30, 1993, we agreed to conduct a status review throughout the lower 48 States to determine if the species was threatened or endangered, and to complete the review and publish the finding by November 15, 1994. On February 2, 1994, we published a notice announcing continuation of the status review (59 FR 4887).

On April 27, 1994, we received a petition to list the conterminous U.S. population of ''North American'' lynx as threatened or endangered. Additionally, the petitioners requested that the Southern Rocky Mountain population of the ''North American'' lynx in Wyoming and Colorado be emergency-listed. We published a notice on August 26, 1994, that the petition presented substantial information that listing may be warranted, but that we determined emergency listing was not warranted for the Southern Rocky Mountain population (59 FR 44123).

On December 27, 1994, we published a notice (59 FR 66507) of our 12-month finding that listing the lynx in the contiguous United States was not warranted because of the lack of residency in lynx populations in the lower 48 States and our inability to substantiate that threats such as ''trapping, hunting, poaching, and present habitat destruction'' actually ''threaten the continued existence of the lynx in the wild.'' On January 30, 1996, the Defenders of Wildlife and 14 other plaintiffs filed a lawsuit challenging our finding.

On March 27, 1997, the court issued an opinion and order setting aside the not warranted finding and remanding it back to us for further consideration. We were ordered to publish a 12-month finding on the status of the lynx within 60 days. On May 27, 1997, we published a 12-month finding (62 FR 28653) that the lynx population in the contiguous United States was warranted for listing under the Act but precluded by higher priority listing actions. This warranted-but-precluded finding automatically elevated the lynx to candidate species status.

On September 15, 1997, Defenders of Wildlife *et al.* filed suit in response to our finding that listing the Canada lynx population in the contiguous United States was warranted but precluded. On February 12, 1998, a settlement agreement was reached that called for us to finalize a proposed rule to list the Lynx in the contiguous United States by June 30, 1998. The proposed rule to list the contiguous United States DPS of the Canada lynx as threatened was published on July 8, 1998 (63 FR 36994).

On July 8, 1999 (64 FR 36836), we extended the listing deadline by 6 months to receive and evaluate comments on new information contained in a report, ''The scientific basis for lynx conservation in the contiguous United States'' (Science Report), prepared by a team led by the Forest Service's Rocky Mountain Research Station (Ruggiero *et al.* 1999c). As a result, the new listing deadline became January 8, 2000. The Act permits such an extension for the purpose of soliciting additional data when there is substantial disagreement regarding the sufficiency or accuracy of the available data relative to the determination.

The Act requires listing determinations to be made using the best scientific and commercial data available. However, the 1998 settlement agreement allowed only 4 months within which to prepare the proposed rule to list the lynx, much less time than the 9 months allowed by the Act to conduct a status review to make a listing determination. Consequently, we were not able to gather nor consider the best scientific and commercial data available at the time of publication of the proposed rule; instead we relied primarily on data we had gathered during the lynx status review in 1994. Therefore, this final rule treats information available since 1994 as new information; whereas, typically, new information is that information made available subsequent to the proposed rule.

Summary of Comments and Recommendations

In the July 8, 1998, proposed rule and associated notifications (63 FR 58910), all interested parties were requested to submit comments or suggestions on the proposed rule, particularly on the following topics—(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species; (2) Additional information concerning the range, distribution, and population size of the species; (3) Current or planned activities in the subject area and their possible impacts on the species; and (4) Additional information pertaining to the promulgation of a special rule to provide States and Tribes the opportunity to maintain the lead role in protection, management, and recovery of the species through the voluntary

development and implementation of a conservation plan. In the proposed rule, we announced that 10 public hearings on the proposal would be held in various locations throughout the range of the lynx in the contiguous United States. One additional public hearing was announced on August 26, 1998 (63 FR 45445).

Open houses and public hearings, providing an additional forum for public comment on the proposed rule, were held in Colorado, Idaho, Montana, Oregon, Washington, Wyoming, Maine, and Wisconsin. The 60-day comment period on the proposed rule, originally closing on September 30, 1998, was twice extended by request. The first extension was announced on October 2, 1998, and extended the comment period to October 14, 1998 (63 FR 53010). The second extension was announced on October 19, 1998, and extended the comment period on the proposed rule until November 16, 1998 (63 FR 55839).

On July 8, 1999 (64 FR 36836), we extended the listing deadline by 6 months to receive and evaluate comments on new information contained in a report, ''The scientific basis for lynx conservation in the contiguous United States'' (Science Report), prepared by a team led by the Forest Service's Rocky Mountain Research Station (Ruggiero *et al.* 1999c). The Act permits such an extension for the purpose of soliciting additional data when there is substantial disagreement regarding the sufficiency or accuracy of the available data relative to the determination. On August 18, 1999, we announced that we had reopened the comment period for an additional 38 days to allow the public to provide additional comment on the proposed rule based on new information contained in the Science Report (64 FR 44883).

Prior to making our final listing determination on the lynx, we held the 11 announced public hearings, and allowed for a total of 140 days of public comment on the proposed rule and Science Report. Appropriate Federal and State agencies, tribal governments, county governments, scientific organizations, and other interested parties were contacted and requested to comment during the initial comment period, notified of the extensions, and were again contacted when the comment period was reopened to allow evaluation of the Science Report. Notices of the proposed rule and public hearings were sent to over 1,200 individuals, and public notices were published in 63 newspapers within the contiguous U.S. range of the lynx, including the Spokesman Review, Spokane, Washington; Wenatchee World, Wenatchee, Washington; The Oregonian, Portland, Oregon; The La Grande Observer, La Grande, Oregon; The News Review, Roseburg, Oregon; The Daily Courier, Grants Pass, Oregon; The Bend Bulletin, Bend, Oregon; The Idaho Statesman, Boise, Idaho; Great Falls Tribune, Great Falls, Montana; Independent Record, Helena, Montana; The Missoulian, Missoula, Montana; The Billings Gazette, Billings, Montana; Bozeman Daily Chronicle, Bozeman, Montana; The Daily Inter Lake, Kalispell, Montana; The Western News, Libby, Montana; Casper Star-Tribune, Natrona County, Wyoming; Wyoming Tribune Eagle, Laramie County, Wyoming; The Cody Enterprise, Cody, Wyoming; The Dubois Frontier, Fremont County, Wyoming; Jackson Hole News, Jackson, Wyoming; Pinedale Roundup, Sublette County, Wyoming; The Riverton Ranger, Fremont County, Wyoming; Thermopolis Independent Record, Thermopolis, Wyoming; Detroit Free Press, Detroit, Michigan; Lansing State Journal, Lansing, Michigan; Daily Mining Gazette, Michigan; Marquette Mining Journal, Marquette, Michigan; Iron Mountain News, Iron Mountain, Michigan; Escanaba Press, Escanaba, Michigan; The Evening News, Michigan; North Country Sun, Michigan; Ontonagon Herald, Ontonagon, Michigan; L'Anse Sentinel, L'Anse, Michigan; The Munsing News, Munsing, Michigan; Manistique Pioneer Tribune, Manistique, Michigan; The Newberry News, Newberry, Michigan; Iron River Reporter, Iron River, Michigan; The Menominee County Journal, Michigan; Minneapolis Star Tribune, Minneapolis, Minnesota; St. Paul Pioneer Press, St. Paul, Minnesota; Duluth News Tribune, Duluth, Minnesota; Ely Echo, Ely, Minnesota; Grand Forks Herald, Grand Forks, Minnesota; Bemidji Pioneer, Bemidji, Minnesota; International Falls Journal, International Falls, Minnesota; Virginia Mesabi News, Minnesota; Cook County News, Minnesota; Grand Rapids Herald Review, Minnesota; Milwaukee Journal Sentinel, Milwaukee, Wisconsin; Wisconsin State Journal, Madison, Wisconsin; Wausau Herald, Wausau, Wisconsin; Florence Mining News, Florence, Wisconsin; Spooner Advocate, Spooner, Wisconsin; Rhinelander News, Rhinelander, Wisconsin; Vilas County News Review, Wisconsin; Superior Daily Telegram, Superior, Wisconsin; Bangor Daily News, Bangor, Maine; Manchester Union Leader, Manchester, New Hampshire; Burlington Free Press, Burlington, Vermont; Albany Times Union, Albany, New York; Rocky Mountain News, Denver, Colorado; Boulder Daily Camera, Boulder, Colorado; and The Daily Sentinel, Grand Junction, Colorado.

We received a total of 3,548 responses on the proposed rule, 166 oral and 3,382 written comments. Of these comments, 7 were from Federal agencies; 58 were from State, county, city governments or schools; 3,261 were from individuals; 214 were from organizations and industry; 5 were from tribal governments, and 3 were from Canada. Most of these responses were received in the form of a form letter or postcard. Of these commentors, 2,676 supported listing the Canada lynx, 780 opposed listing, and 92 expressed no position.

In response to the reopening of the comment period on August 18, 1999, to receive comment on the Science Report, we received an additional 379 responses. Of these, 239 supported a listing, 115 opposed the listing, and 25 provided comment on the Science Report only. All written and oral statements presented at the public hearings and received during the public comment periods, including comments on the Science Report and peer review comments, are addressed below and within the text of this rule. Comments of a similar nature are grouped into general issues. These issues and our response to each are discussed below.

Issue 1—Several commentors believed that there are insufficient and/or inadequate data to support evidence of lynx existence and viable population status within the lower 48 States or at the southern fringes of the range. They believed lynx should be managed in Canada rather than by the Act in the United States. Numerous commentors strongly opposed listing the lynx in Oregon and other individual States, claiming there has never been a self-sustaining breeding population of lynx in a particular State. Several commentors were concerned that much of the information used to develop the range maps for lynx in the United States may represent only dispersing individuals and does not indicate viable populations capable of successful reproduction and recruitment. Similarly, several individuals commented that the distribution maps in the Science Report do not accurately reflect occupied range and that there is no evidence that lynx currently exist in many of the States that the map identifies as occupied.

Response—The scientific basis for our findings and conclusions in the proposed rule and those in the Science Report were questioned by many of the affected State wildlife agencies and others that responded during the public

comment period. When making a listing determination, we are required to use the best available scientific and commercial information. To accomplish this, section 4(b)(6)(B) of the Act allows for a 6-month extension of a final determination for the purpose of soliciting additional information if there is substantial disagreement regarding the sufficiency or accuracy of the available data. In the case of the lynx finding, because there was substantial disagreement regarding the sufficiency or accuracy of the available data, we extended for 6 months the deadline for a final listing determination on the proposal to list the contiguous United States DPS (64 FR 36836). The 6-month extension allowed us to receive and evaluate new information contained in the Science Report, a scientific report on lynx prepared by a team of scientist assembled by the Forest Service's Rocky Mountain Research Station in 1998. The Science Report is a comprehensive compilation and assessment of historic and current lynx occurrence records and distribution, scientific literature, lynx and prey ecology, habitat correlations and threats to the continued existence of lynx in the contiguous United States. The Science Report is the only comprehensive assessment of lynx in the contiguous United States and was used, as was the new information obtained during the comment period, in our final listing determination (see ''Background,'' ''Distribution and Status,'' and ''Summary of Factors'' sections).

Current and best available information, including the Science Report, verified the persistence and presence of lynx in the contiguous United States and recent records of lynx in Oregon (see ''Distribution and Status'' section). However, with the limited information available on the species, we cannot ascertain whether a resident lynx population exists currently or existed historically in Oregon. We believe that many of the lynx records in the contiguous United States, including Oregon, are of transient animals that dispersed during cyclic population increases (see ''Background'' and ''Distribution and Status'' sections). Regardless, the Act, and the Service in administering the Act, do not make a distinction between resident populations, breeding populations, and transient or breeding individuals when considering a species for listing. However animals that are considered ''dispersing,'' and found in unsuitable habitat are considered lost from the metapopulations, because they are unlikely to survive unless they return to boreal forest. Therefore, dispersing individuals were not considered in this listing. Further, the fact that lynx are managed in Canada does not relieve us from our statutory responsibilities to protect the wildlife of the United States. We have determined that the contiguous United States population of lynx is a DPS under the Act and warrants listing as a threatened species. This determination, therefore, includes all lynx within the contiguous United States, whether they be transient lynx or resident populations.

The lynx distribution maps developed for the Science Report were produced by overlaying lynx occurrence records on maps of primary vegetation types (McKelvey *et al.* 1999b). The authors included all occurrence records made available by State, tribal, and Federal agencies, published and unpublished reports, and museum and harvest records. Furthermore, they considered the reliability of the records. Although there may be errors for some individual data points, these data provide a good basis for us to evaluate lynx occurrence and distribution in the contiguous United States. The maps defined vegetation types for which most lynx occurrences are associated. They are not maps of occupied habitat.

Issue 2—Many commentors believed we have insufficient or inadequate data to show that a sufficient prey base historically existed or currently exists in the lower 48 States to support lynx.

Response—The Act requires that the Service make listing determinations solely on the basis of the best scientific and commercial data available. Where there is little information available we use our best scientific judgement and that of experts in the field. Available snowshoe hare information as it applies to lynx is summarized by Hodges (1999a, 1999b) in the Science Report. Additionally, we relied on the availability of the primary habitat types used by both snowshoe hares and lynx as an indicator of suitable habitat and likely presence of one or both species (see ''Distribution and Status'' and ''Factor A'').

Issue 3—Many commentors believed there were insufficient or inadequate data to support a listing and that the decision-making process concerning the proposal to list the lynx was being driven by political pressure and lawsuits. One commentor also believed that the limited quantity of evidence gathered by the Service does not meet the standard of sound science required by the Act and that the proposed rule did not acknowledge the strengths and limitations in the extant body of research related to Canada. For example, trapper harvest data do not account for trapper effort which may be affected by pelt prices, social change or climatic conditions. Several commentors wanted to know what the effects of trapping on lynx population status and potential recovery were and if the mortality from accidental trapping or animal damage control activities were significant to the overall population. They similarly commented that the Science Report failed to provide quantified data and conclusions justifying additional protection under the Act and believed that additional studies were needed and should be initiated and completed. They suggested that we defer a decision until more information is available.

Response—While lawsuits have had an important procedural impact in our listing process, whether the species warrants listing under the Act is a substantive biological determination and has remained our responsibility. We have carefully assessed the best scientific and commercial data available, as required by the Act. We recognize that there are limitations in the extant body of data, including the trapping information, and have taken those limitations into consideration when evaluating the data. As described in ''Factor B'' in the ''Summary of Factors'' section, harvest returns are affected by factors that influence trapper effort and success, such as changes in socioeconomic conditions, season length, quotas and trapping restrictions, and ease of access. However, we also recognize the harvest data provided information on the presence and persistence of lynx within the contiguous United States (see ''Distribution and Status'' section). Furthermore, harvest data for lynx in Canada has similarly provided information about the persistence of lynx in adjacent habitats in Canada and increased our understanding of lynx population dynamics (see ''Background,'' ''Distribution and Status,'' and ''Factor B'' sections). We have determined that the occurrence of lynx within the contiguous United States is influenced to varying degrees by immigration of lynx from Canada.

We carefully assessed the effects of trapping during our review of the species' status (see ''Factor B'' and ''Factor E'' in the ''Summary of Factors'' section). The effects of trapping on lynx populations are variable depending on factors such as whether lynx taken are a part of a resident population or dispersing individuals that are unlikely to reproduce and contribute to a population, fitness of the lynx population in a given area, connectivity within a larger metapopulation, the

impact of other threats to the population, and the additive nature of these threats. If the population is doing well in an area and there are no threats to its continued existence, trapping mortality would not likely jeopardize the population. However, if other threats to a resident population exist, the additive nature of additional losses to the population may prove to be significant, at least on a local scale. Mortality from accidental trapping or animal damage control activities would be considered incidental and in most cases would not be significant; we have no information to indicate that the loss of such individuals has negatively affected the overall ability of the contiguous United States DPS to persist.

We agree that additional studies of lynx are necessary to better understand the dynamics and requirements of lynx populations in the contiguous United States (see ''Distribution and Status'' section). However, the Act does not allow us to defer a listing decision based on the need for more research. Most scientists would agree that there is always a need for more research, but listing decisions cannot be postponed based on this premise when known threats to a species are present that may result in a species' trend toward extinction.

Issue 4—Several wildlife professionals stated that the effects of overharvesting lynx during the 1970s and 1980s were overstated in our proposed rule and that it does not explain current population levels. If lynx were overharvested in the past, they should have had sufficient time to recover by now. They stated that overutilization is no longer a potential threat nor an additive threat to the continued existence of lynx.

Response—We made our determination to propose the species for listing based on the available information at the time. We concluded that low numbers of lynx in the contiguous United States and Canada were the residual effects of substantial overtrapping that occurred in the 1970s and 1980s. We no longer believe that to be true (see ''Factor B'' in the ''Summary of Factors'' section). New information explains that the cyclic lynx highs of the early 1960s and 1970s that are reflected in harvest records were unprecedented high levels for the 20th century. Harvest returns that we believed to be abnormally low, were being compared to harvest records during the unprecedented high levels of the 1960s and 1970s rather than to data for cycles over a longer period of time. Comparisons of the recent records to earlier records from the 20th century indicated comparable harvest records. We conclude that, in the contiguous United States, lynx populations are naturally at low densities; therefore, what seem to be low population levels compared to those of the northern boreal forest in Canada and Alaska likely are normal for lynx at the southern portion of their range where optimal habitat is naturally limited (see ''Factor B''of the ''Summary of Factors'' section).

We recognize the limitations of using harvest data to evaluate the status of a vertebrate population (see ''Distribution and Status'' section and ''Factor B'' of the ''Summary of Factors'' section). There can be numerous reasons for a smaller harvest return one year compared to previous returns, such as trapper effort, weather, or low pelt prices. States in the contiguous United States substantially restricted or closed their lynx harvest seasons by 1990, resulting in less information with which to evaluate the current status of lynx. We now believe that ongoing precautions taken by States and Provinces to restrict lynx trapping since the 1980s possibly prevented the overharvest of resident populations of lynx. We concur with Mowat *et al.* (1999) that it is possible lynx were overharvested in local areas but that in time, particularly with the protection given lynx from trapping closures in the contiguous United States, dispersal by lynx from healthy populations has led and in the absence of significant threats will lead to the repopulation of such areas.

Issue 5—Numerous individuals commented that the proposed rule and the Science Report failed to demonstrate that there are significant threats to the survival of the lynx, claiming that there is little evidence in the proposed rule or the Science Report to support claims that current management practices, including timber harvesting and human access, adversely affect lynx; that lynx are old growth obligates; that either bobcat or coyotes are direct competitors for prey with lynx; that lynx habitat throughout the lower 48 States has been fragmented, degraded or reduced by human activity; or that this has resulted in lynx declines. Additionally, these commentors asked how important were localized threats to the overall status of the species and if we knew enough about the threats to assess the cumulative effects to lynx.

Response—In the proposed rule, we identified numerous potential threats to the continued existence of lynx based on information available at the time. Since then we have significant new information regarding the magnitude and imminence of some of the factors identified as threats in the proposed rule. However, there is still a lack of quantifiability information to determine whether some of the possible threats have or would actually result in lynx declines. Both the ''Summary of Factors'' and ''Background'' sections discuss the new information we have obtained and how it has been assessed in our decision, particularly regarding habitat (Factor A) and competition issues (Factor E). Because a substantial amount of lynx habitat in the contiguous United States occurs on federally managed lands, particularly in the West, we conclude that the factor threatening lynx in the contiguous United States is the lack of guidance in existing Federal land management plans for conservation of lynx and lynx habitat. Implementation of lynx conservation through revision of Federal land management plans may sufficiently remove threats to the species such that it no longer warrants listing.

Issue 6—Many State agencies believed the proposed rule failed to demonstrate that there has been significant extirpation of lynx within the lower 48 States or that a significant range reduction has occurred. There is disagreement on the status and historic range of lynx within some States. Furthermore, they believe that lynx do not occur throughout predicted habitat. They requested information on the basis of our determination of whether a resident or remnant lynx population existed within a State and if the low numbers were the result of poor monitoring, marginal habitat or poor rates of immigration from source populations. They believed the Science Report likewise failed to assess lynx population size, status, and trends.

Response—The Act requires us to make listing determinations on the best available scientific and commercial information. Data are often not available to make statistically rigorous inferences about a species' status (*e.g.,* abundance, population trends, and distribution). The extant body of data concerning lynx population status, trends, and historic range is limited. Current information about lynx in the contiguous United States allows us to understand the distribution of lynx. However, the available data for most States do not allow us to assess whether resident populations were historically or are currently present (see ''Distribution and Status'' section). The scientific community is just beginning to study issues such as specific habitat and prey requirements necessary to support lynx populations, role of dispersing animals in metapopulation dynamics, and lynx

demographics. However, given these uncertainties, we are still charged with determining whether the species warrants listing under the Act. After reviewing the best available information, obtained through a comprehensive effort involving review of historic and current occurrence records, including harvest records for both Canada and the United States; sightings and track records; personal communications with lynx, hare, and forest ecology experts; and a review of all available literature, we have made several conclusions about the status of lynx in the contiguous United States as described in the ''Distribution and Status'' and ''Finding'' sections.

In the proposed rule we attempted to identify whether each of the States historically supported or currently support resident populations of lynx. The Act does not make a distinction between protection of resident and migratory or transient species, or between resident populations and those supported by immigration from Canada. Whether a species resides in whole or in part in the United States, it is eligible for protection under the Act. In many instances we cannot be certain whether the lynx was historically resident in a region or was wholly made up of transient animals from Canada or other parts of its range, or a combination of these (see ''Background'' and ''Distribution and Status'' sections). However, given the available information from occurrence records, habitat maps, and comparisons of harvest records from the United States and Canada, we concluded that certain areas, such as the Northern Rockies/Cascades Region, continue to support self-sustaining resident lynx populations, while in other areas or regions we were unable to determine the historic or current presence of a resident lynx population based on available information (see ''Distribution and Status'' section).

Issue 7—Numerous commentors made the following statements: The proposed rule failed to demonstrate that the contiguous United States population represents a DPS and, given the large areas of habitat still directly connected to Canada, evidence of movement across the international border, and the failure to demonstrate that the United States' population is significant, designation of a contiguous United States DPS for lynx is not warranted. The Vertebrate Population Policy does not provide authority for using an international boundary and differences in management programs as a basis for determining discreteness. Likewise, the ''significant gap'' criterion in the policy was not intended to be applied to populations on the edge of a species' range. There is no evidence that lynx in the United States are capable of long-term survival if isolated from the larger population in Canada. There is no evidence that lynx populations within the contiguous 48 States were once connected. The idea that semi-isolated subpopulations of lynx separate from each other and from Canada can be supported within the United States is contrary to what is known about lynx ecology. Lynx in the United States are part of a trans-border population and should be managed in cooperation with Canada. Conversely, several commentors believe that lynx in the southern portion of Canada have sharply declined and that we cannot rely on immigration from Canada, nor Canadian management of lynx, to maintain lynx in the United States. Several commentors believe that the lynx deserves protection under the Act based solely on its United States' population.

Response—The Service's Vertebrate Population Policy, published in the **Federal Register** on February 7, 1996 (61 FR 4722) specifies that a population segment may be found to be discrete if it satisfies one of two conditions. One of the two conditions states, ''It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist.'' We have determined that lynx occur in both resident populations and as transients in the contiguous United States and conclude that this population satisfies the above requirement for discreteness based on the international boundary between Canada and the contiguous United States and the differences in management of lynx between Canada and the United States (see ''Distinct Population Segment'' section). While we recognize that portions of the contiguous United States DPS of lynx are part of a trans-border population, when using the international boundary as a criterion for establishing discreteness, the Vertebrate Population Policy does not make a distinction of whether there is movement between the two populations. While we recognize that this movement occurs, and we believe that immigration from Canada may strongly influence the persistent occurrence of lynx in some portions of the United States' population (see ''Distribution and Status'' section), this does not negate the international boundary for establishing discreteness between Canadian' and United States' lynx populations under our policy.

Based on the discreteness of a population, our Vertebrate Population Policy requires that we consider the significance of the population to the taxon to which it belongs. We believe there are climatic and vegetational differences in lynx habitat between Canada and the United States, as well as ecological differences between lynx in the contiguous United States and northern populations in Canada and Alaska (see ''Distinct Population Segment'' section). Therefore, the contiguous United States' population meets the significance criteria for establishment of a DPS.

Additionally, we believe the criterion relating to a ''significant gap'' in the species' range applies to any discrete unit that exhibits significance regardless of whether it is on the edge of the species' range. For example, there may be situations where populations at the edge of a species range may have unique genetic characteristics or may have adapted to unique or unusual ecological conditions.

Finally, after we established that the United States' population of lynx is discrete and significant, we then applied the listing criteria to the contiguous United States' population of lynx and determined that it meets the definition of a threatened species under the Act (see Factors A-E in the '' Summary of Factors'' section).

Issue 8—Many commentors believed that lynx in different regions of the United States, isolated in island populations and divided regionally by ecological barriers, even State boundaries, are biologically significant and should be considered for listing separately so that each population can be protected and managed according to its needs. They think that, for a wide-ranging species such as lynx, the status of the lynx population in Montana should have no bearing and should not provide a baseline for populations struggling to survive elsewhere in the lower 48 States. In particular, they stated that the Southern Rockies meets the definition of a DPS and that it should be listed as endangered because it is likely on the verge of extirpation, is genetically isolated, faces continued threats, and meets the definition of an unusual or unique ecological setting. These commentors stated that loss of lynx in the Southern Rockies would result in a significant gap in its range. Furthermore, there is scientific consensus that lynx were once viable in Colorado and southern Wyoming. Conversely, some commentors believe lynx at the southern edge of the range

should be excluded from listing. They stated that existing data suggest that lynx exist in the lower 48 States, especially east of Montana, only as a rare and transitory species at the edge of its range, dependent on continued immigration from Canada.

Response—We recognize that, within the contiguous United States, the distribution of the lynx is divided into four geographically isolated regions; the Northern Rockies/Cascades, Southern Rockies, Great Lakes and Northeast (see ''Distribution and Status'' and ''Distinct Population Segment'' sections). In evaluating whether these qualified as separate DPSs or should be considered one, we analyzed whether lynx in these individual regions qualified as both discrete and significant according to our DPS policy. We concluded that within the United States they were geographically isolated and, therefore, qualified as discrete. When considering whether a population meets the significance test, policy requires that our evaluation take into account the population as it relates to the entire range of the taxon. In the case of the lynx, the range of the taxon is extensive and exists mainly in Canada and Alaska. Only a small portion of the range extends into the United States. The Southern Rockies and Northeast regions account for an extremely small fraction of the entire range of the taxon. We determined that none of the regions individually constitute significantly unique or unusual ecological settings. Within all four regions of the contiguous United States the distribution of lynx is associated with the southern boreal forest. The important element for lynx is forest structure that provides food and cover for snowshoe hares and cover for lynx dens, not the specific vegetation found within the boreal forest. Therefore, the individual regions could not be considered individually significant under our Vertebrate Population Policy and could not be separated from the contiguous United States DPS as a whole. We determined that, individually, none of the four regions fulfill both the discreteness and significance criteria as required under the Vertebrate Population Policy (see ''Distinct Population Segment'' section). Therefore, we conclude that the listable entity is the contiguous United States DPS of the lynx, consisting of the Northeast, the Great Lakes, the Northern Rockies/Cascades, and the Southern Rockies regions.

Within the contiguous United States, the relative importance of each region to the persistence of the DPS varies. The Northern Rockies/Cascades Region supports the largest amount of lynx habitat and has the strongest evidence of persistent occurrence of resident lynx populations, both historically and currently. In the Northeast, Great Lakes, and Southern Rockies regions, the amount of lynx habitat is relatively limited and does not contribute substantially to the persistence of the contiguous United States DPS. We conclude the Northern Rockies/Cascades Region is the primary region necessary to support the continued long-term existence of the contiguous United States DPS.

Issue 9—Several individuals believed that we failed to take into account the increased abundance of mountain lions as a threat to lynx and that the rule should acknowledge this concern and discuss this factor as potentially affecting Canada lynx.

Response—At the time we wrote the proposed rule to list the lynx as a threatened species, we did not address mountain lion competition with lynx because we had no information that it was a potential threat. Subsequently, the Science Report has identified the potential threat of mountain lion competition (Aubry et al. 1999; Buskirk et al. 1999a). Definitive data on the potential threat of mountain lions on lynx are lacking. However, because known incidents of mountain lions killing lynx are rare, we presume they occupy different ecological niches (particularly in winter), and because they depend on different prey, we conclude that the population-level effect of mountain lions on lynx is minimal (see ''Factor E'' of the ''Summary of Factors'' section).

Issue 10—Some commentors believed we did not provide for adequate public participation in commenting on the Science Report or in response to the listing proposal.

Response—Prior to making our final listing determination on the lynx, we held 11 public hearings and allowed for a total of 140 days of public comment on the proposed rule and Science Report. Our proposed rule to list the lynx as threatened, published in the **Federal Register** on July 8, 1998, opened a 60-day comment period during which we requested comments and materials concerning the proposed rule. At the same time we announced that 10 public hearings on the proposal would be held in various locations throughout the range of the lynx in the contiguous United States. One additional public hearing was announced on August 26, 1998 (63 FR 45445). Open houses and public hearings, providing a forum for verbal comment on the proposed rule, were held in Colorado, Idaho, Montana, Oregon, Washington, Wyoming, Maine, and Wisconsin. Announcements of the proposed rule and public hearings were made in local newspapers throughout the range of the lynx. The comment period on the proposed rule, originally closing on September 30, 1998, was twice extended by request. From the time a proposed rule is published, the Act allows 12 months in which to make and publish a final determination on a listing action. We extended the 1-year period for the lynx final listing determination for 6 months in a July 8, 1999, **Federal Register** announcement (64 FR 36836), specifically to allow for review, evaluation, and comment on the Science Report because there was substantial disagreement regarding the sufficiency and accuracy of the information. On August 18, 1999, we announced in the **Federal Register** that we were reopening the comment period for an additional 38 days to allow the public to review and comment on the proposed rule based on new information contained in the Science Report, which was placed on the Internet for accessibility. Press releases were issued to ensure the public was aware of the reopened comment period. While we received requests to extend the comment period on the Science Report, we declined to do so because of the time frames the Act allows for completion of a final listing determination, the amount of public notice about the Science Report and rapid availability of the Science Report to interested parties via the Internet.

Issue 11—Several individuals believe the lynx should be listed as endangered, not threatened because they believe the lynx is in danger of extinction throughout a significant portion of its range, that it is part of our cultural heritage and should be protected. They stated that in light of the uncertainties about the existing information collected on lynx status and threats, the Service should be cautious and protect existing populations of lynx while additional information is collected. If listed as endangered the lynx would receive the full protection of the Act. Listing would focus more attention on the precarious status of the species and encourage State wildlife agencies to do more educational outreach and encourage conservation on private lands. These commentors also stated that a listing would increase attention given to lynx by Federal land management agencies and would provide the oversight that is needed to ensure conservation and recovery activities are implemented and are effective. Some commentors also believed that failure to list the lynx as

endangered would be contrary to the settlement agreement and other court-ordered stipulations, as well as the Service's listing priority guidance. They stated that the proposed rule to list the lynx as threatened rather than endangered is inconsistent with the prior ''warranted'' petition finding of May 27, 1997, in which the Service assigned the lynx its highest listing priority number because of the magnitude and imminence of the threats. Conversely, some commentors believed that a listing as threatened was more appropriate and would provide the opportunity and resources to plan a conservation strategy at the landscape scale.

Response—When evaluating whether a species, or in this case a DPS, should be listed as threatened or endangered, we first assess the current status of the DPS and then analyze the degree, magnitude and imminence, of the threats to its continued existence. If we conclude that a DPS of a species is likely to go extinct in the foreseeable future, then we must list it as endangered. If we conclude that it is likely to become endangered in the foreseeable future then we must list it as threatened. While we made an extensive effort to find and assess all the available information on the status of lynx in the contiguous United States, the best scientific information available does not provide a clear picture as to the current status of the species (see ''Distribution and Status'' section). The lack of information on lynx does not allow us to determine with certainty whether the species' population trend is stable, increasing or declining. However, we can make several inferences from the available data. Resident populations continue to exist in the Northern Rockies/Cascades and Northeast regions. Available information provides evidence that within the contiguous United States, lynx continue to occur in most places with historical evidence of persistence except for possible range reductions in the Northeast and Southern Rockies. Given available information on current and historical lynx occurrence and threats, as identified in the ''Summary of Factors'' section, we conclude that the contiguous United States DPS of the lynx is threatened (see ''Finding'' section).

In the proposed rule, various threats were identified as potentially affecting lynx populations (see ''Summary of Factors'' section), including competition, habitat loss and fragmentation, and the inadequacy of existing regulatory mechanisms (in the form of land management plans) to protect the species. However, there is inconclusive evidence that any of these factors, with the exception of inadequate regulatory mechanisms, may actually adversely affect the contiguous United States' lynx population. At the local level, particularly in the Southern Rockies, habitat loss and fragmentation may negatively affect lynx (see ''Factor A'' and ''Factor E'' of the ''Summary of Factors'' section). However, at the DPS scale, we conclude the factor threatening lynx is the inadequacy of existing regulatory mechanisms, specifically the lack of guidance for conservation of lynx and lynx habitat in Federal land management plans (see ''Factor D'' of the ''Summary of Factors'' section). A substantial number of the primary areas of lynx occurrence are on Federal lands (see ''Factor A'' of the ''Summary of Factors'' section) where programs, practices and activities allowed by current plans may cumulatively impact lynx.

In the settlement agreement dated February 12, 1998, we agreed to publish a proposed rule to list the lynx within the contiguous United States under section 4 of the Act. At the time, we had not determined whether it warranted threatened or endangered status. In the ''warranted but precluded'' petition finding of May 27, 1997, we assigned the lynx a listing priority number of 3. Guidelines for assigning listing priority numbers, published in the **Federal Register** on September 21, 1983 (48 FR 43098), describe a system for considering three factors in assigning a species a numerical listing priority on a scale of 1–12. The three factors are magnitude of threat (high or moderate to low), immediacy of threat (imminent or non-imminent), and taxonomic distinctiveness (monotypic genus, species or subspecies/population). For a population, such as the contiguous United States' Canada lynx population, listing priority numbers of 3, 6, 9, or 12 are possible. At the time of the ''warranted but precluded'' finding we concluded that the overall magnitude of threats to lynx was high and that the threats were imminent. Therefore, a priority number of 3 was assigned. New information indicates that threats are at a much lower magnitude than previously believed (see ''Summary of Factors'' section).

Issue 12—Several commentors were concerned that we did not propose a special 4(d) rule for incidental take of lynx along with the proposed listing. They encouraged us to cooperate with the respective States and Tribes in the development of a 4(d) rule and wondered what type of Federal oversight role would follow the issuance of a special rule.

Response—Section 4(d) of the Act provides that whenever a species is listed as threatened, the Secretary of Interior will issue regulations deemed necessary and advisable to provide for the conservation of the species.

We have issued regulations that generally apply to threatened wildlife virtually all the prohibitions that section 9 of the Act establishes with respect to endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' any listed wildlife species; to harass, harm pursue, hunt, shoot, wound, kill, trap, or collect any threatened or endangered species or to attempt to engage in any such conduct (16 U.S.C. section 1532 (19)).

Our regulations for threatened wildlife also provide that a ''special rule'' under section 4(d) of the Act can be tailored to define the section 9 prohibitions for particular threatened species. In that case, the general regulations applying most section 9 prohibitions to threatened species do not apply to that species, and the special rule is to contain the prohibitions (and exemptions) necessary and appropriate to conserve that species.

Such regulations generally are issued and published as special rules in the **Federal Register** along with or following a listing. This final rule includes a special 4(d) rule that addresses the taking and export of captive lynx. To address incidental take of lynx while engaged in otherwise lawful hunting and trapping for bobcat we are currently consulting under section 7 of the Act with the U.S. Fish and Wildlife Service's Office of Management Authority which issues CITES permits for export of bobcat pelts. Additionally, we have worked with State and Tribal agencies and are currently preparing an additional special 4(d) rule to address incidental take of lynx resulting from otherwise lawful hunting and trapping for species other than bobcat (and other than lynx). This proposed amendment to the special rule will describe the Federal oversight that will be required if the rule is implemented. We hope to publish the proposed special rule in the **Federal Register** as soon as possible following this listing rule.

Issue 13—One commentor asked what role the Draft Lynx Conservation Assessment and Strategy (LCAS) would play in the long-term conservation of lynx if the species were listed. Another commentor was concerned about conferencing with other Federal agencies to conserve lynx and how we

intended to work with other agencies to identify and implement protective lynx measures. They suggested that a comprehensive review of the Forest Service Forest Management Plans is needed to assess their impacts upon potential lynx habitat and that management plans should be revised to improve snowshoe hare and lynx habitat. Many commentors also stated that Federal agencies should manage and protect public lands in a manner that will increase snowshoe hare habitat.

Response—The LCAS was developed to provide a consistent and effective approach to conservation of lynx on Federal lands in the contiguous United States (United States Forest Service *et al.* 1999). It was developed by the Forest Service, Bureau of Land Management (BLM), National Park Service, and the Service. The overall goals of the LCAS were to develop recommended lynx conservation measures, provide a basis for reviewing the adequacy of the Forest Service and BLM Land and Resource Management Plans with regard to lynx conservation, to facilitate section 7 conferencing and consultation under the Act should the lynx be listed (see ''Factor D'' of the ''Summary of Factors'' section) and to guide future recovery efforts. The ''Draft Biological Assessment of the Effects of National Forest Land and Resource Plans and Bureau of Land Management Land Use Plans on Canada Lynx'' (DBA) identified potential effects resulting from 57 Forest Service Land and Resource Management Plans and 56 BLM Land Use Plans within the 16-State area where lynx were proposed for listing (United States Forest Service and Bureau of Land Management 1999).

Section 7(a)(4) of the Act states that Federal agencies shall confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 of the Act or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. Conferencing is a process of early interagency cooperation involving informal or formal discussions between a Federal agency and the Service regarding the likely impact of an action on proposed species or critical habitat. It is designed to help Federal agencies identify and resolve potential conflicts between an action and species conservation early in a project's planning and to develop recommendations to minimize or avoid adverse effects to proposed species or proposed critical habitat. With this final rule to list the lynx within the contiguous United States as threatened, conferencing is no longer applicable and any agency actions that may affect the lynx will need to be addressed under consultation in accordance with section 7(a)(2) of the Act.

For the lynx, the Forest Service, BLM, National Park Service, and the Service recognized that Federal agencies have a significant role in the conservation of lynx. They established a Lynx Steering Committee in 1998 consisting of representatives from each agency. The Steering Committee provides oversight and guidance to teams established to address various lynx conservation issues on Federal lands. One team developed the LCAS; another team developed the Science Report; a third team prepared a biological assessment to evaluate the effects of Forest Service and BLM Land Management Plans on lynx. All of these efforts are intended to plan and implement sound conservation actions and management decisions for lynx on Federal lands.

Issue 14—Numerous commentors were concerned about the economic, social, and cultural effects of listing the lynx. They believed a listing would result in increased burdens on local economies affecting jobs, culture and way of life, and that the cost of implementing a lynx conservation and recovery program is not an efficient allocation of tax dollars.

Response—When drafting the Act, Congress found in section 2(a)(1) that, ''various species of fish, wildlife and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation.'' In keeping with this finding, listing decisions, other than critical habitat designations, are not subject to economic analyses. The purpose of listing a species is to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to conserve the various species facing extinction. In accordance with 16 U.S.C. 1533(b)(1)(A) and 50 CFR 424.11(b), listing decisions are made solely on the basis of the best scientific and commercial data available. In adding the word ''solely'' to the statutory criteria for listing a species, Congress specifically addressed this issue in the 1982 amendments to the Act. The legislative history of the 1982 amendments states— ''The addition of the word 'solely' is intended to remove from the process of the listing or delisting of species any factor not related to the biological status of the species. The committee strongly believes that economic considerations have no relevance to determinations regarding the status of species * * *,'' H.R. Rep. No. 567, Part I, 97th Cong., 2d Sess. 20 (1982). Therefore, we have not considered the impacts of listing on economic development in making this listing determination. However, economic impacts will be considered in the designation of critical habitat.

Issue 15—We received numerous comments concerning the impact of a listing on the status of introduced lynx in Colorado and requests that these animals be declared a 10(j) ''nonessential experimental population.''

Response—The term ''experimental population'' as defined in the Act, refers to any population (including any offspring arising solely therefrom) of an endangered species or a threatened species released outside the current range of the species to further its conservation. Experimental populations can only be established when they are wholly separate geographically from nonexperimental populations of the same species. Since there is no clear evidence of the absence of a lynx population within the area prior to reintroduction, establishment of an ''experimental population'' would not be possible and was not pursued in Colorado. The lynx that were recently introduced into Colorado from Canada and Alaska were released prior to this rule and the resulting placement of the species on the list of threatened and endangered species. Therefore, as of this final rule, they are considered resident lynx and do not qualify as an experimental population. Further, these reintroduced lynx are included as part of the listed entity and placed on the list of threatened and endangered species as of the effective date of this final rule.

Issue 16—Several commentors believed that there is a very limited potential, or none at all, for re-establishment, recolonization, and population expansion of historic lynx habitat because of habitat changes, human-induced mortality, and bobcat and mountain lion competition with lynx. They believed the lynx decline is the result of global warming, a natural factor which has allowed the prey generalists, and bobcat and mountain lion, to move into lynx territory and outcompete this less adaptable specialist.

Response—We recognize that some historic lynx habitat may no longer be suitable for recolonization of lynx because of habitat changes. However,

we do not agree that global warming or the expansion of the bobcat range has resulted in eliminating historic habitat from recolonization by lynx. There is no evidence that either the bobcat or mountain lion outcompete the lynx for habitat and food resources (see ''Factor E'' of the ''Summary of Factors'' section). The lynx, bobcat, and mountain lion co-evolved in similar, yet spatially segregated environments. The lynx is specially adapted for deep snow habitats while the bobcat and mountain lion are not. This special adaptation allows the lynx to outcompete bobcat and mountain lion in deep snow environments. Because we have limited understanding of lynx habitat requirements, it is difficult to determine precisely the amount of habitat available historically or currently. In the majority of the range of lynx in the contiguous United States, suitable habitat remains available (see ''Factor A'' of the ''Summary of Factors'' section). There is no evidence to support global warming as a threat to the lynx.

Issue 17—Several commentors stated that in lieu of listing, we should pursue candidate conservation mechanisms that eliminate the need to list. Efforts should be focused on landscape planning, developing conservation agreements, forest management plans and lynx conservation criteria in lieu of listing. A multi-species forest planning process, incorporating not only species but special habitats and unique biological communities, would be a better approach, providing more protection to lynx and other wildlife communities, than a single species listing under the Act. They believed that managing for only one species might be detrimental to other species or communities.

Some commentors stated that we failed to take into account the continuing forest fragmentation and increased competition brought on by road construction, excessive timber harvest, off-road back country use and ski area development. They stated that we should implement strong standards to prevent excessive logging, road development, and other human developments in important lynx habitat. Lynx conservation can only be achieved at the landscape scale. They further believed that we failed to take into account the adequacy, inadequacy, political pressures, and limitations of current State and Forest Service programs and questioned the role of these existing programs for lynx as regulatory mechanisms.

Response—We fully support candidate conservation mechanisms, landscape planning, and changes in forest planning as mechanisms to conserve candidate species and species at risk. We are signatories to numerous candidate conservation agreements across the country. The Act requires us to consider conservation efforts by the States and others in listing decisions. However, to conclude that a conservation effort removes the need to list a species, we must determine that the conservation effort is sufficiently certain to be implemented and effective.

In the case of amending forest management plans, we have specifically identified current Federal regulatory mechanisms as a threat to lynx because of the ongoing and potential future actions allowed by current Land and Resource Management Plans. Changes in land management plans to manage these potential threats would result in a significant reduction to the current threats facing the species and, therefore, would strongly factor in future lynx status determinations. In the case of State regulatory and conservation mechanisms, we also have identified that existing State programs will be essential in lynx conservation and recovery (see ''Issue 19'').

Issue 18—Numerous State agencies believe that Federal intervention is not necessary to manage and protect the lynx and that State regulatory protection is adequate. Some States hold that they are already doing everything they can to protect and conserve the lynx. They further believe that States are in a better position to manage the lynx in the future, as they maintain the bulk of the information and management expertise and that we should, as an interim step, assist the respective States and other Federal agencies in gathering biological information and implementing management plans through funding or joint ventures. They questioned how the Act provides for a species' recovery.

Response—The role of the Service, as mandated by the Act, is more encompassing than is the role of individual States, or even groups of States. States are responsible for the management of species within their boundaries and to their credit, most if not all States have implemented lynx management measures. The Service, pursuant to the Act, must evaluate the status of a species throughout its entire range and, when determined necessary, provide for its conservation and recovery. In the case of the lynx, this includes 14 separate States. While some States may still harbor resident populations of lynx, the status of lynx in other States is unclear. The Service, as a Federal agency, is responsible for coordinating recovery of a species such as the lynx that crosses State boundaries and occupies substantial amounts of habitat on Federal lands. Furthermore, we have identified the major threat to lynx as the inadequacy of Federal regulatory mechanisms to provide for the long-term conservation of the species. Listing the lynx under the Act confers substantive protections not otherwise provided by State management.

We agree that the States maintain management expertise and knowledge of lynx within their boundaries, particularly concerning evidence of resident populations or individuals and local snowshoe hare abundance. Much of the available information on lynx status and threats comes from the reports of State wildlife agencies. States have already taken significant steps within their jurisdiction to conserve lynx. With the exception of Oregon, all States within lynx range have closed lynx trapping seasons. In some cases they have been closed for more than 2 decades. New York and Colorado have attempted lynx reintroduction as a means to re-establish viable populations. Long-term conservation of the lynx will not only be dependent on the States continuing their respective conservation programs, but on Federal agencies improving their efforts to conserve lynx and, where necessary, amending regulations, policies and/or practices for the conservation of the species.

When a species is listed under the Act, additional protections and prohibitions are applied. These efforts further conservation in several ways. When a species is listed under the Act as either threatened or endangered, it becomes illegal to ''take'' the species without a permit or incidental take statement from the Service. The term ''take'' means to harass, harm, hunt, should, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. ''Harm'' is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns, such as breeding, feeding, or sheltering. ''Harass'' is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include but are not limited to breeding, feeding, or sheltering. Federal agencies are required to conserve species listed under the Act and to consult with the Service on any actions that may affect the species. Furthermore, the Act requires that the Service develop and implement a species recovery plan unless such a plan will not promote the recovery of the

species. When a species is considered recovered, it can then be removed from the list of threatened and endangered species.

Issue 19—One commentor stated that if the lynx were listed, restrictions imposed, such as limitations on trapping, would interfere with Tribal treaty rights.

Response—We have been communicating with Tribal governments regarding development of a special 4(d) rule (see ''Issue 12'') that would address the incidental take of lynx resulting from otherwise legal trapping and hunting for species other than lynx on Tribal lands. Under Executive Order 13084 ''Consultation and Coordination with Indian Tribal Governments'' (63 FR 27655, May 14, 1998) we are to inform and receive input from Tribal governments of any actions, such as listings under the Act, that may affect Tribes and to work to resolve any conflicts. However, there are certain circumstances where we cannot resolve issues to everyone's satisfaction. The Act applies to Tribal, as well as all other lands within the United States, and, therefore, the prohibitions brought on by the listing of a species, also apply. There are numerous Tribes within the range of the lynx that might be affected by this listing. On some Tribal lands lynx harvest seasons have already been closed. We will continue to work with Tribal governments to avoid or minimize conflicts should they arise.

Issue 20—In response to our reopening of the comment period for review of the Science Report we received numerous specific comments on the adequacy, accuracy and reliability of the Science Report. One commentor believed we should convene a Blue Ribbon panel to review the Science Report and make those deliberations part of the record. The information should be shared with the States and collaborative workshops conducted to ensure that all information is thoroughly evaluated and judged fairly against standards that are supportable.

Response—We employed a seldom-used section of the Act, section 4(b)(6)(B), in extending the time frame for issuance of a final listing rule by 6 months. We reopened the comment period on the lynx proposed rule specifically to allow for review, evaluation, and comment on the Science Report because there was substantial disagreement regarding the sufficiency and accuracy of the data relative to the listing determination in the proposed rule. We solicited comments on the Science Report from hundreds of agencies, Tribal governments, organizations, scientific experts, and individuals. All comments received have been incorporated into the administrative record for this rule and have been reviewed and incorporated into our decision making process.

While we recognize that there are limitations to the Science Report and have attempted to explain these throughout this rule, we also believe that it provides a comprehensive review of the current knowledge concerning the lynx in the contiguous United States. Therefore, we could not ignore it during our review. We have conducted an exhaustive review of the Science Report and all available literature and data on lynx in the United States, as well as the extensive comments we received on the proposed listing. Because of the wide range of the species, sizable list of interested parties and time limitations, it was not possible to convene a workshop of all interested parties specifically to discuss the Science Report. However, we have been in contact with specialists knowledgeable about lynx, hares, forest ecology and management, and potential lynx competitors to discuss various issues about the Science Report. This also is part of the administrative record for this finding.

Issue 21—Numerous responses addressed and opposed a proposed reintroduction of lynx into Idaho.

Response—We received extensive comment on this particular issue and are addressing it here for clarification purposes. We have not proposed a reintroduction effort for Idaho. At this time, we have not proposed any reintroduction efforts for lynx. Past reintroduction, both in New York and in Colorado, have been initiated and conducted by State wildlife agencies because they believed the lynx had been extirpated or extremely reduced in numbers in specific, historically occupied habitat. In recent years, Idaho Department of Fish and Game considered reintroducing lynx into the State. If during the course of recovery planning for lynx, reintroduction are proposed, we would conduct extensive public outreach, with public hearings and comment periods, to determine the feasibility of such a project.

Peer Review

On July 1, 1994, we published a notice in the **Federal Register** announcing our interagency policy to clarify the role of peer review in activities we undertake under authority of the Act (59 FR 34270). This Interagency Cooperative Policy on Peer Review states that it is the policy of the Service to incorporate independent peer review in listing decisions during the public comment period in the following manner—(1) Solicit the expert opinions of a minimum of three appropriate and independent specialists regarding pertinent scientific and commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for species under consideration for listing; and (2) Summarize in the final decision document the opinions of all independent peer reviewers received on the species under consideration.

In accordance with this policy, in a letter dated August 21, 1998, we solicited the expert, independent professional opinion of six peer reviewers. We specifically asked the reviewers to address the following questions—(1) Does the information referenced and described in the ''Distribution and Status'' section of the proposed rule support the Service's conclusions regarding the status of the lynx in the contiguous United States; and (2) Does the information referenced and described in the ''Summary of Factors Affecting the Species'' section of the proposed rule support the Service's conclusions about threats to the lynx in the contiguous United States? We also requested the reviewers advise us of other available information that would assist us in making a final listing decision.

In response to our solicitation, we received two comment letters. Both commentors stated that they believed the status and threats to the lynx were reliably documented in the proposed rule. The commentors provided some additional information concerning an ongoing survey for lynx populations and the status of lynx in Idaho, Washington, and Wyoming, and also commented that our conclusion that resident populations of lynx historically occurred in Massachusetts, Pennsylvania, and Utah, and possibly Vermont and New Hampshire, was problematic. This information has been incorporated into our discussion of the status of the species. The same response also indicated that the forest practice of precommercial thinning was a greater threat than we had indicated and felt that conservation of lynx across southern Canada was important to conservation of lynx across the northern United States. These comments also have been incorporated into our analyses.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to

implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Canada lynx (*Lynx canadensis*) are discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Factors affecting lynx habitat include human alteration of the distribution and abundance, species composition, successional stages, and connectivity of forests, and the resulting changes in the forest's capacity to sustain lynx populations. People change forests through timber harvest, fire suppression and conversion of forest lands to agriculture. Forest fragmentation may eventually become severe enough to isolate habitat into small patches, thereby reducing the viability of wildlife that are dependent on larger areas of forest habitat (Litvaitis and Harrison 1989).

Since the publication of the proposed rule, we received new information related specifically to lynx—habitat associations (McKelvey *et al.* 1999b; United States Forest Service and Bureau of Land Management 1999), the distribution and ownership of lynx forest types as well as the amount of habitat in specific Federal land allocations (United States Forest Service and Bureau of Land Management 1999), the types and effects of different forest management practices (United States Forest Service *et al.* 1999), the effects of fire suppression (Agee 1999), and some probable implications of forest management practices on lynx forest types (McKelvey *et al.* 1999d).

New information suggests that lynx in the contiguous United States occur at naturally low densities. Lynx are limited to moist, cool boreal forests that support some minimum density of snowshoe hares, where winters are snowy (Ruggerio *et al.* 1999b). Snowshoe hares in the contiguous United States occur at low levels compared to northern reaches of their range in Canada and Alaska (Hodges 1999a, 1999b). Two important human influences on snowshoe hare habitat are timber harvest and fire suppression; however, our knowledge of how lynx populations respond to these specific impacts is limited.

In all regions of the lynx range in the contiguous United States, timber harvest and its related activities are a predominant land use affecting lynx habitat. Timber harvest and associated forest management can be benign, beneficial, or detrimental to lynx depending on harvest methods, spatial and temporal specifications, and the inherent vegetation potential of the site.

For example, intensive tree harvesting (large-scale clearcutting) can eliminate the mosaic of habitats and mix of forest stand age classes that promote lynx survival, including late successional seral stages that support lynx denning and red squirrel habitat, and early successional snowshoe hare habitat. The response of lynx populations to particular vegetative mosaics is unknown. However, timber harvest can result in reduced cover, unusable forest openings, and large monotypic stands with sparse understories that are unfavorable for lynx and snowshoe hare, the primary lynx prey (Brittell *et al.* 1989; de Vos and Matel 1952; Harger 1965; Hatler 1988; Koehler 1990; K. Gustafson, pers. comm. 1994; J. Lanier, pers. comm. 1994). Some studies indicate that lynx avoid openings such as clear-cut, unforested areas, and grasslands (Koehler *et al.* 1979; Koehler and Brittell 1990; Murray *et al.* 1994). Snowshoe hares also are unlikely to use such areas because of the lack of cover (Koehler *et al.* 1979; Koehler and Aubry 1994; H. Golden, Alaska Department of Fish and Game, pers. comm. 1994). Mechanical thinning of densely stocked young stands to promote vigorous growth of fewer trees can reduce the stem densities required to support high numbers of snowshoe hare (United States Forest Service *et al.* 1999a). Reductions in cone-bearing mature and older forests can result in decreases in habitat for red squirrel, an important alternate lynx prey (Koehler 1990; O'Donoghue 1997; Apps 1999; Mowat *et al.* 1999).

Forestry practices can be beneficial when the resulting understory stem densities and structure meet the forage and cover needs of snowshoe hare (Keith and Surrendi 1971; Fox 1978; Conroy *et al* 1979; Wolff 1980; Parker *et al.* 1983; Litvaitis *et al.* 1985; Monthey 1986; Bailey *et al.* 1986; Koehler 1990; McKelvey *et al.* 1999d). Hodges (1999a, 1999b) illustrated that snowshoe hare densities are highest in regenerating stands with very high stem densities. Regeneration harvest can be used to create high quality snowshoe hare habitat, especially where natural regeneration would be expected to provide dense young vegetation. Although large openings may initially be underused by snowshoe hare and lynx, regeneration harvest units in appropriate habitat types eventually (in 15 years or more depending on the type of forest) achieve early successional stages in forests preferred by snowshoe hares (Monthey 1986; Quinn and Parker 1987; Koehler 1990; Koehler and Brittell 1990; Washington Department of Wildlife 1993; McKelvey *et al.* 1999c). Lynx can readily move across landscapes fragmented by commercial forestry (Squires and Laurion 1999). Larger openings can often more closely resemble vegetative patterns that follow natural disturbance events, and decrease amounts of edge favorable to generalist predators (McKelvey *et al.* 1999c).

Natural fire has an important role in forest ecology in some forest types in the United States. During the early 20th century, Federal and State agencies in the contiguous United States enacted a policy of suppressing forest fires. The effects of fire suppression, as well as timber harvest, on lynx habitat vary among the geographic regions (Agee 1999) and will be discussed separately below for western and eastern regions.

McKelvey *et al.* (1999b) used lynx occurrence data to describe lynx distribution patterns and habitat associations. The primary vegetation classes encompassing the majority of lynx occurrences in the West were Rocky Mountain Conifer and Pacific Northwest Conifer, including Douglas-fir and western spruce/fir and fir/hemlock. In the Great Lakes, the primary vegetation class was Mixed Deciduous-Coniferous, and in the Northeast, Mixed Forest-Coniferous Forest-Tundra. These broad vegetation classes include areas that because of elevation or other physical factors are not considered lynx habitat and cannot easily be deleted from the data. Therefore, accurate assessments of the total amount of lynx habitat within these regions is not possible. However, we assume that the areas encompassed within these vegetation classes contain the majority of lynx habitat types in the regions. We also assume that pockets of lynx habitat may occur outside these broad vegetation classes. With these assumptions in mind, where our discussion is based on lynx/habitat associations as reported in McKelvey *et al.* (1999b), we shall refer to the landscapes characterized by these broad vegetation classes as lynx forest types.

Northern Rockies/Cascades and Southern Rockies

In the western regions, most lynx forest types occurs on Federal lands. Of all western forest types, the western boreal forests (subalpine fir/spruce forests which provide lynx habitat) have the highest proportion of reserved land, largely because they are primarily in public ownership and are the least productive timberland, making land use

trade-offs between preservation and extraction less controversial than for other public lands (Agee 1999). Human land use that changed areas of forest land, disturbance patterns, and dominant tree species is much less prevalent in the West than in the Great Lakes or Northeast boreal forest (Agee 1999). Broad-scale habitat assessments generally support these conclusions.

Large amounts of lynx forest types occur on Federal lands, within both developmental and nondevelopmental allocations within the western regions. Lands in developmental allocations are managed for multiple uses, such as recreation and timber harvest. Lands within nondevelopmental allocations are to be managed to allow natural ecological processes to dominate (United States Forest Service and Bureau of Land Management 1999). Nondevelopmental lands contain large portions of wilderness or other natural areas (D. Prevedal, United States Forest Service, *in litt.* 1999). Timber harvest and construction of roads typically do not occur or are very limited in lands managed in nondevelopmental allocations. Large proportions of Federal lands in each of the western regions are managed under nondevelopmental allocations. In an assessment of the Columbia River Basin of eastern Washington and Oregon, Idaho, and western Montana, more than 35 percent of cold forest types encompassing subalpine fir/spruce habitats, were in designated wilderness, wilderness study areas, or other administrative natural areas (United States Department of Agriculture and United States Department of the Interior 1997).

Raphael *et al.* (1999) developed a broad-scale landscape model for lynx that assessed conditions across the Columbia River Basin. The model was based on the changes from historic to current amounts of habitat, landscape mosaics, disturbance regimes, vegetation structures, road densities, and human population. The model produced two outcomes, a habitat outcome and a population outcome. We acknowledge that such coarse-scale analyses may not reflect finer-scale environmental requirements that potentially account for a large amount of variation in lynx demographics. Preliminary results of the model suggest that lynx habitat is broadly distributed and of high abundance (relative to historic conditions) across the historic range of the species in the Columbia River Basin, and provides opportunity for intraspecific interactions for the species (Raphael *et al.* 1999). The model's population outcome for lynx suggests that the potential distribution of lynx in this area is restricted and characterized by patchiness and/or areas of low abundance. There is opportunity for subpopulations in most of the specie's range in this area to interact as a metapopulation; however, some subpopulations are essentially isolated.

At finer scales of analysis, the Forest Service and BLM concluded that many Forest and BLM administrative units have land and resource management plans that may adversely affect lynx due to timber harvest activities (United States Forest Service *et al.* 1999; United States Forest Service and Bureau of Land Management 1999). These plans may affect individual lynx or local lynx populations primarily in the developmental allocation areas of the Northern Rockies/Cascades and Southern Rockies regions, although the assessment did not quantify the level of impact.

Since publication of the proposed rule, we have received information related to past and projected timber harvest levels and precommercial thinning activities on Federal lands in the West. Timber harvest levels on Federal lands in the West have declined consistently and dramatically (approximately 80 percent) over the past decade or longer (R. Gay, United States Forest Service, *in litt.* 1999). Timber harvest in specific lynx forest types also has concurrently declined in the Northern Rockies (B. Ballenbacher, United States Forest Service, *in litt.* 1999; B. Ferguson, United States Forest Service, pers. comm. 1999) and Cascades (Fred Zenson, United States Forest Service, pers. comm. 1999), and the Southern Rockies (B. Short, United States Forest Service, *in litt.* 1999).

The Forest Service's projected need for future precommercial thinning on Forest Service lands over the next decade in the Northern Rockies, Cascades, and Southern Rockies will affect less than approximately 1–4 percent of primary lynx forest types within each of these regions (B. Ballenbacher, United States Forest Service, *in litt.* 1999; B. Ferguson, United States Forest Service, pers. comm. 1999; B. Short, *in litt.* 1999; F. Zenson, United States Forest Service, pers. comm. 1999). Past thinning and timber harvest impacted similarly low proportions of lynx forest types on Federal lands in the Northern Rockies (B. Ballenbacher, *in litt.* 1999; B. Ferguson, pers. comm. 1999), Cascades (F. Zenson, pers. comm. 1999) and the Southern Rockies (B. Short, *in litt.* 1999). Precommercial thinning has occurred in approximately one-fifth (B. Ballenbacher, *in litt.* 1999) to one-half (B. Short, *in litt.* 1999) of the early successional vegetation created by timber harvest in lynx forest types on western Federal lands over the past decade. This likely reduced snowshoe hare habitat quality at local scales, adversely affecting individual lynx. However, considering the overall proportions of lynx forest types affected, timber harvest and precommercial thinning on Federal lands are not currently conducted, nor are they likely in the projected future to be conducted, at levels likely to impact lynx at the population level.

However, the Northern Rockies encompass more privately owned lynx forest types than elsewhere in the West. Almost one-third of lynx forest types are in private ownership. Although we lack specific information, large portions of this habitat likely occur on privately owned corporate timber lands where timber harvest and thinning occurs. There are no data available on these private lands which would allow us to make a conclusion concerning the quality of lynx and snowshoe hare habitat. However, there is a potential for current and future management of these lands to adversely affect lynx.

Most lynx forest types in the West occur on Federal lands, and large Federal acreage of this habitat in the Northern Rockies/Cascades and Southern Rockies are managed in nondevelopmental status, where timber harvest activities and precommercial thinning generally do not occur. Nondevelopmental allocations on Federal lands require that natural ecological processes play a dominant role in the landscape (United States Forest Service and Bureau of Land Management 1999), as opposed to developmental lands, which are managed for multiple uses, such as recreation and timber harvest.

Large portions of nondevelopmental lands occur in the Northern Rockies and Cascades regions, which encompass most of the lynx forest types in Wyoming, Utah, Montana, Idaho, Oregon, and Washington. We recognize the importance of wildlands and nondevelopmental lands in the Northern Rockies/Cascades Region to provide lynx habitat that is buffered from many human impacts, creating the most likely stronghold for lynx populations in the contiguous U.S.

In the Northern Rockies, nearly 50 percent of the 35 million acres of lynx forest types is in nondevelopmental allocations on Forest Service lands or occurs in National Parks. In the Northern Rockies, 67 percent of the lynx forest types are managed by the Forest Service, 5 percent by the BLM, and 28 percent are in other ownerships (see

''Table 1''). The Forest Service and BLM manage over 24 million acres of lynx forest types. Of federally managed lynx forest types, 57 percent (roughly 14 million acres) lies within areas with nondevelopmental status. Sixty-seven percent of this 14 million acres lie within wilderness or scenic river designations (D. Prevedal, *in litt.* 1999), both of which provide restrictions on land use beneficial to lynx. Additional large tracts of lynx forest types occur in Glacier (735,310 acres) and Yellowstone (1,910,590 acres) National Parks (D. Prevedal, *in litt.* 1999). However, the 43 percent of federally managed lynx forest types that are in developmental status are managed for multiple uses that may, on local scales, conflict with lynx conservation.

TABLE 1.—AMOUNT OF LYNX FOREST TYPES IN GEOGRAPHIC REGIONS IN THE CONTIGUOUS U.S., AMOUNT OF LYNX FOREST TYPES (LFT) ON FOREST SERVICE (FS) AND BUREAU OF LAND MANAGEMENT (BLM) LANDS, AND FEDERAL LAND ALLOCATIONS IN LYNX FOREST TYPES (DATA FROM U.S. FOREST SERVICE AND BUREAU OF LAND MANAGEMENT 1999)

Geographic region	Total acres LFT, all ownerships	Total acres LFT on FS/BLM	Total acres FS/BLM LFT non-developed allocations	Percent LFT on FS/BLM	Percent FS/BLM LFT in nondeveloped allocations	Percent all LFT in nondeveloped allocations
Cascades	4.2 M	4.1 M	3.6 M	99	87	85
Northern Rockies	34.3 M	24.8 M	14.1 M	72	57	41
Southern Rockies	6.5 M	5.3 M	1.4 M	82	25	23

The Cascades and Southern Rockies regions encompass substantively smaller proportions of lynx forest types. In the Cascades Region, 99 percent of lynx forest types are managed by the Forest Service, less than 1 percent by the BLM, and less than 1 percent is in other ownerships (see ''Table 1''). The Forest Service and BLM manage approximately 4 million acres of lynx forest types. Of federally managed lynx forest types, 87 percent (3.5 million acres) lies within areas with nondevelopmental allocations and 13 percent occur in areas of developmental status, where multiple use management occurs. Ninety percent of this 3.5 million acres is in wilderness or in key watersheds under the Pacific Northwest Forest Plan, and the remaining 10 percent is in matrix lands including late successional reserves, which allows limited timber harvest such as salvage harvest (D. Prevedal, *in litt.* 1999). In Washington and Oregon, the National Park Service manages an additional 200,000 acres of lynx forest types (D. Prevedal, *in litt.* 1999).

In the Southern Rockies, 76 percent of the lynx forest types are managed by the Forest Service, about 5 percent by the BLM, and 19 percent is in other ownerships (see ''Table 1''). Federally managed lynx forest types amount to over 5 million acres. Of the federally managed lynx forest types, only 25 percent (1.4 million acres) lies within areas with nondevelopmental status while the other 75 percent are in developmental status and are managed for multiple uses that may, on local scales, conflict with lynx conservation.

Considering the Northern Rockies, Cascades and Southern Rockies, a cumulative total of 56 percent of Forest Service and BLM lands is managed in nondevelopmental status, comprising over 40 percent of lynx forest types, allowing for 44 percent to be managed for multiple uses which may conflict with lynx conservation. National Parks in the western regions add several million acres of lynx forest types in more or less undeveloped status.

We conclude that timber harvest activities and precommercial thinning may reduce the quality of snowshoe hare habitat and red squirrel habitat in local areas of the Northern Rockies/Cascades and Southern Rockies, and thus may negatively affect lynx at local scales. Furthermore, the large percentage of Federal lands in developmental status and managed for multiple use may, on local scales, conflict with lynx conservation. However, based on the large proportion of lynx forest types managed in nondevelopmental status compared to the proportion of managed lynx forest types affected, current regional effects of timber harvest and thinning appear to occur at levels that are not likely threatening the Northern Rockies/Cascades and Southern Rockies lynx populations.

Federal land management in developmental allocations often maintains conditions suitable for lynx, and these lands constitute important landscapes providing regional connectivity. Construction of roads, timber harvest, and fire suppression occur in developmental allocations. However, recent studies of lynx have documented lynx presence and reproduction in a variety of managed landscapes (Koehler 1990; Staples 1995; Apps 1999; Squires and Laurion 1999; J. Organ, U.S. Fish and Wildlife Service, pers. comm. 1999). Lynx occurrence records provide evidence that lynx continue to be broadly distributed throughout lynx forest types in the Northern Rockies/Cascades and Southern Rockies (McKelvey *et al.* 1999b), both inside and outside of the nondevelopmental allocation areas within the last decade (U.S. Forest Service and Bureau of Land Management 1999).

Because of the preponderance of lynx forest types on Forest Service, BLM, and National Park system lands, Federal land management assumes the largest single role in the conservation of lynx in western portions of its range. We believe that the large amounts of lynx forest types managed in nondevelopmental allocations, especially in designated wilderness areas, protects lynx in the Northern Rockies/Cascades and Southern Rockies and contributes to the likelihood of persistence of lynx into the future. The forests upon which lynx depend have had less timber harvest, road construction, and have been modified much less than other drier forests (U.S. Forest Service and Bureau of Land Management 1997). In addition, significant portions of these forests are within areas that do not have roads and have habitat that has been classified as wilderness. Natural fires are more likely allowed to burn in wilderness or areas without roads, which helps retain diversity in structural stages and create habitat mosaics in forests for the future. Also, in the Northern Rockies/Cascades Region there are strong habitat connections to lynx populations in

Canada. The Northern Rockies/Cascades Region has the highest potential for maintaining a viable lynx population within the DPS, based upon the large amount of lynx forest types, the large portions of habitat in nondevelopmental management, and strong regional connections to lynx forest types and lynx populations in Canada.

Natural fire has an important role in forest ecology in western mountain ranges of the United States. Some researchers believe that fire suppression during the past 50 years has allowed certain forest types to mature, thereby reducing habitat suitability for snowshoe hares and Canada lynx (Brittell *et al.* 1989; Fox 1978; Koehler 1990; Washington Department of Wildlife 1993; T. Bailey, U.S. Fish and Wildlife Service, *in litt.* 1994; W. Hann, U.S. Forest Service, *in litt.* 1999).

However, others argue that fire suppression is most likely affecting lynx habitat in areas where the historical frequency of fires is shorter than the length of time fires have been suppressed (P. Stickney, U.S. Forest Service, pers. comm. 1994; Agee 1999). Fire suppression in areas with a history of infrequent fire has probably not had much impact (Habeck 1985; Agee 1993). In the western boreal forest zone, long natural fire return intervals (150–300 years) signify that removal of fire has not been as significant as in the West with lower-severity fire regimes and return intervals (30–90 years), even though fire suppression has been in effect for much of this century (Agee 1993, Agee 1998 *in* Agee 1999). More frequent fires of lower intensity do occur in some boreal forest types (W. Hann, *in litt.* 1999), although they typically comprise a small proportion of the total area burned (Agee 1999). In forests with high-severity fire regimes, a number of smaller fires burn a small proportion of the forests, while fewer larger fires account for most of the area burned (McKelvey and Busse 1996 *in* McKelvey *et al.* 1999d; Agee 1999). Lynx forest types in the West include a preponderance of forest types with long natural fire return intervals and high-fire intensity (S. Arno, U.S. Forest Service, *in litt.* 1998; Agee 1999), which suggests that removal of fire in lynx forest types has not been as significant as in the lower-severity fire regimes of the West (Agee 1998 *in* Agee 1999).

In the Northern Rockies, most of the wilderness areas in Montana and Idaho have fire management plans that affect more than 5 million acres that allow naturally caused fires to burn during certain periods and in certain areas (N. Warren, U.S. Forest Service, *in litt.* 1999). In Wyoming and Utah, one-third of the wilderness areas also have completed similar fire plans, with the remaining plans close to completion (B. Noblit, U.S. Forest Service, *in litt.* 1999). Glacier and Yellowstone National Parks allow natural fires to burn under many conditions. In the Cascades, two of three wilderness areas have fire management plans in place (B. Naney, U.S. Forest Service, Okanogan, pers. comm. 1999). Further, the 1994 Federal Wildland Fire Policy directs the Department of the Interior and the Department of Agriculture to use a full range of potential responses to fire, from full suppression to allowing more fires to burn large areas thereby allowing fires to assume a larger role in maintaining forest health in the future (B. Meuchel, pers. comm. 1999; D. Milburn, pers. comm. 1999). However, natural fire regimes are not necessarily restored because prescriptive criteria to manage these natural wildland fires remain conservative.

Currently, outside large wilderness areas in all western regions, most fires are suppressed. Most fires (98 percent) are successfully extinguished when small and only a small proportion of fires burn large areas (B. Meuchel, U.S. Forest Service, pers. comm. 1999; D. Milburn, U.S. Forest Service, pers. comm. 1999). Fires are extinguished largely due to costs, firefighter safety, local human safety and property concerns. The majority of these fires occur outside lynx forest types at lower elevations in drier forests. However, fires igniting in the lynx forest types outside, and some fires inside, wilderness are suppressed, which can reduce the amount of early seral forests compared to natural conditions and/or change species composition and structural components of forests (W. Hann, *in litt.* 1999). The total area that would have burned had such fires been allowed to burn is likely not substantive when compared to the proportion of the landscape burned by the large, high-intensity fires typical of lynx forest types. However, the resulting pattern of vegetation mosaic and the mix of stand age classes may be altered, as the large fires may burn areas more uniformly due to lack of fire breaks that would have been created by past, smaller fires (D. Milburn, pers. comm. 1999). Other natural processes such as insects, disease, and wind-throw also can play a role in affecting the vegetation mosaics.

Based on available information on fire suppression and upon available habitat assessments, we conclude that at the present time, fire suppression effects are less evident in lynx forest types than in many other forest types in the West. In the Cascades, fire return intervals in many lynx forest types are very long, 200–500 years (Agee 1999). Mixed-severity fire regimes were not common; therefore, fire suppression is not a factor limiting lynx in the Cascades. In the Northern and Southern Rockies, fire intervals also are long and fire regimes are typically intense (Agee 1999). Where mixed-severity fire regimes occur in the Northern and Southern Rockies, lynx habitat quality may be affected at some local scales, especially outside of wilderness areas, resulting in adverse effects to individual lynx. However, considering a larger scale, the current effects of fire suppression alone are not threatening the Northern Rockies/Cascades and Southern Rockies lynx at the population level at this time.

While recent studies of lynx have documented lynx presence and reproduction in a variety of managed landscapes (Koehler 1990; Staples 1995; Apps 1999; Squires and Laurion 1999; J. Organ, U.S. Fish and Wildlife Service, pers. comm. 1999), we remain concerned about the maintenance of lynx habitat conditions, especially since a large percentage of lands managed by the Forest Service and BLM are in developable status and allow programs, practices and activities that may impact lynx and their primary prey, snowshoe hare. Lynx occur naturally at very low densities in the contiguous United States (see ''Background'' section). It is imperative that snowshoe hare and alternate prey populations be supported by habitat on Federal lands into the future, to ensure the persistence of lynx in the contiguous United States. Substantive declines in prey species, especially snowshoe hare, may result in a prey base insufficient to support lynx populations. Therefore, amendment of Forest Plans to provide protection for lynx and lynx habitat is needed to conserve habitat for lynx and its prey on Federal forest lands. Without such amendments, the species is threatened.

Northeast

In the Northeast Region, softwoods that provided Canada lynx habitat were logged extensively during the late 1800s and early 1900s (Jackson 1961; Barbour *et al.* 1980; Belcher 1980; Irland 1982). Over a short time period, timber extraction during this era resulted in the replacement of late-successional conifer forest with extensive tracts of very early successional habitat, which eliminated cover for lynx and hare (Jackson 1961; Keener 1971). In the Northeast Region, slash, accumulated during logging operations, fueled wildfires that burned vast acreage of softwood forest (Belcher 1980; J. Lanier, pers. comm. 1994). This

sudden alteration of habitat may have resulted in sharp declines in snowshoe hare numbers over large areas, subsequently reducing lynx numbers (Jackson 1961; Keener 1971; K. Gustafson, pers. comm. 1994; J. Lanier, pers. comm. 1994).

The impacts of the logging conducted in the Northeast Region during the late 1800s continue to affect lynx forest types. In Maine, softwood cover and dense sapling growth provided improved snowshoe hare habitat after timber harvest and fires in late successional forests (Monthey 1986). However, in the western sections of the Northeast Region, extensive tracts of predominantly softwood forests that were harvested and burned-over during the late 1800s and early 1900s were subsequently replaced with regenerating hardwoods (D. Degraff, pers. comm. 1994; J. Lanier, pers. comm. 1994). Hardwood forests do not typically supply adequate cover for snowshoe hares (Monthey 1986). For a period of time, this extensive area would have provided the early successional habitat used by snowshoe hare. However, such extensive tracts may not have provided a suitable mosaic of forest habitats and as succession progressed, these large tracts eventually became unsuitable for both snowshoe hare and lynx. Declines in snowshoe hare habitat may have occurred during the 1940s and 1950s as a result of large-scale forest maturation (Litvaitis *et al.* 1991).

In Maine, large tracts of forest (some as large as 36-square mile townships) were harvested in the 1960s to reduce the incidence of spruce budworm. During early successional stages, these forests may provide high quality hare habitat. However, these large tracts create a simplified, monotypic forest over large areas, not a mosaic of forest stands. Passage of the State Forestry Practices Act has required clear-cut size to be substantially reduced. The Maine Department of Conservation recently analyzed Statewide timber production on Maine's 17 million acres of forest land (Gadzik *et al.* 1998). The report indicated 25 percent of the forest was in seedling/sapling stages, which likely includes quality snowshoe hare habitat. However, the report concludes that increasing the number of acres under high-yield silvicultural practices, which will likely include precommercial thinning, to a cumulative total of 9 percent of Maine's forest land by the year 2015 is necessary to sustain the current timber harvest levels into the future. Such high-yield techniques may temporarily reduce snowshoe hare habitat quality, but the long-term effects on lynx on a landscape scale are not known.

Forested habitat in the Northeast has increased because of land-use changes during the past century (Irland 1982; Litvaitis 1993), including the abandonment of agriculture in many areas. In some areas there may be a gradual upward trend in the coniferous component as spruce and fir regenerate beneath hardwood species (D. Degraff, pers. comm. 1994). Several of the northeastern States support adequate, if not abundant, snowshoe hare populations (C. Grove, Green Mountain National Forest, pers. comm. 1994; F. Hurley, *in litt.* 1994; J. Lanier, pers. comm. 1994).

In 1990, the Forest Service published a report that examined the Northern Forest Lands in New York, Vermont, New Hampshire, and Maine (Harper *et al.* 1990). Eighty-four percent of northern forest lands in the region are currently privately owned and 16 percent are in public ownership. According to another analysis, the Forest Service manages only 7 percent of lynx forest types in the Northeast, of which 23 percent is managed in nondevelopmental status (U.S. Forest Service and Bureau of Land Management 1999). Federal land management will have minimal effect on the persistence of lynx in the Northeast, due to the small amount of lynx forest types managed by the Forest Service.

Commercial forestry continues to be the dominant land use on 60 percent of the private lands in northeastern forests. The rapid pace of subdivision for recreational home sites has been identified as a concern in maintaining the integrity of Northeast forests (Harper *et al.* 1990), though this is not currently posing a significant threat to lynx. At higher elevations and northern latitudes in the Northeast, red spruce and balsam fir are important components of snowshoe hare habitat. Declines in red spruce forests have been documented, and drought, acid deposition, and other human-generated pollutants have been suggested as principal causes (Scott *et al.* 1984). Historic declines in some forest types may have contributed to reducing the quality of lynx habitat in the Northeast. Current lynx research in Maine is contributing to our knowledge about lynx habitat use in the Northeast (J. Organ, pers. comm. 1999).

In Northeast forests, fire return intervals are very long, due to the moist maritime influence (Agee 1999). Thus, fire did not historically play a significant role in creating early successional habitats. Insect infestations and wind were the primary disturbance events that created early successional habitats. While current fire suppression on public and private lands may have localized effects, it is not likely affecting overall lynx forest types in the Northeast. We conclude that fire suppression in the Northeast does not threaten lynx subpopulations there.

We conclude that most lynx forest types are in private, State, or county ownership in the Northeast. Timber harvest and associated activities exert the most influence on lynx forest types in the Northeast, although the extent of influence of current forest practices on lynx is not known.

Great Lakes

In the Great Lakes Region, as in the Northeast, softwood forests were logged extensively during the late 1800s and early 1900s (Jackson 1961; Barbour *et al.* 1980; Belcher 1980; Irland 1982) and over a short period resulted in the replacement of late-successional conifer forest with extensive tracts of very early successional habitat, which eliminated cover for lynx and hare (Jackson 1961; Keener 1971). Coniferous forests also were cleared for agriculture during this period in the Great Lakes.

In the Great Lakes Region, the Forest Service manages about 19 percent of the area within which lynx forest types occur, of which 40 percent is managed in nondevelopmental status (U.S. Forest Service and Bureau of Land Management 1999). The remaining 80 percent of the area encompassing lynx forest types in the Great Lakes is in State, county, or Tribal lands, or is privately owned. Public or Tribal ownership accounts for 41 percent of all lynx forest types in the region (J. Wright, *in litt.* 1999 in U.S. Forest Service *et al.* 1999).

Timber harvest levels on Federal lands in the Great Lakes have declined by approximately 20 percent over the past decade (R. Gay, U.S. Forest Service, *in litt.* 1999). While specific information on timber harvest levels or pulpwood production on non-Federal lands in the Great Lakes was not available, timber harvest is generally prevalent on these lands. Past habitat fragmentation likely occurred from forestry management programs, agricultural conversions, residential development and highways. As in the Northeast, regenerating forests now occupy abandoned farmlands in northern portions of the Great Lakes. However, mixed conifer/hardwood stands are often replaced by pure deciduous seral stands, which have been maintained in deciduous stages in recent years because of the importance of aspen as a crop tree (Agee 1999). In the East, hare densities were higher in

coniferous forests than deciduous (Litvaitis *et al.* 1985; Fuller and Heisey 1986). On managed timber lands in all ownerships, the maintenance of aspen seral components to produce pulpwood precludes the establishment of coniferous forest types, which in turn likely diminishes snowshoe hare habitat quality, adversely impacting lynx.

In the Great Lakes, natural fire regimes are frequent and intense (Agee 1999). Fire suppression in the Great Lakes area has changed the dominant successional pathways, perhaps permanently (Agee 1999). However, in the northeastern portion of Minnesota fires are allowed to burn in the Boundary Waters Canoe Area. This portion of the Great Lakes Region may provide the highest quality lynx habitat, as the largely coniferous forests here more closely resemble the northern boreal forests of Canada than do the transitional coniferous/deciduous forests to the south. On other Federal lands in the Great Lakes, fire suppression policies are such that fire is unlikely to assume its natural role in creating a mosaic of vegetation communities and age classes across the landscape. Escaped fires and other natural processes such as insects, disease, and wind throw maintain natural mosaics to some degree. Lynx foraging habitat is likely to be maintained at levels less than would be provided under natural disturbance regimes. Fire suppression is likely reducing the quality of lynx habitat in the Great Lakes.

Most lynx forest types are in private, State, or county ownership in the Great Lakes and timber harvest is prevalent on these lands. We conclude that timber harvest and fire suppression may be impacting lynx and prey habitat in the Great Lakes Region.

However, we further conclude that timber harvest and fire suppression may have regional or local impacts but do not currently threaten the contiguous United States population. Considering the entire United States distinct population segment, we remain concerned about maintenance of lynx habitat conditions, especially in areas outside nondevelopmental lands in the West. It is imperative that snowshoe hare and alternate prey populations be supported by habitat on Federal lands into the future, to ensure the persistence of lynx in the contiguous United States. We conclude that the single factor threatening the contiguous United States distinct population segment of lynx is the lack of guidance for conservation of lynx and snowshoe hare habitat in National Forest Land and Resource Plans and BLM Land Use Plans (see ''Factor D'' of the ''Summary of Factors'' section). This lack of guidance allows the potential for future degradation of lynx habitat on Federal lands through timber management and other Federal activities (see ''Factor D'' of the ''Summary of Factors'' section).

Factor B. Overutilization for Commercial, Recreational, Scientific, or Education Purposes

One of the primary reasons we proposed to list lynx, based on available information at the time, was our conclusion that the low numbers of lynx in the contiguous United States and southern Canada were the residual effects of overtrapping that was believed to have occurred in the 1970s and 1980s, in response to unprecedented high pelt prices, a concern that was widely shared (Brand and Keith 1979; Todd 1985; Bailey *et al.* 1986; Hatler 1988; Washington Department of Wildlife 1993).

Since the publication of the proposed rule, we have received substantive new information related to relative numbers of lynx in the northern and southern portions of its range. We now understand that lynx in the contiguous United States always existed at low densities, comparable to lynx populations of the northern boreal forest during cyclic lows (Aubry *et al.* 1999) (see ''Background'' and ''Distribution and Status'' sections). These low densities of lynx do not appear to be the result of declining population trends. Rather, lynx are relatively rare in the contiguous United States because of habitats that are inherently unable to support cyclic, high-density snowshoe hare populations and are thus unable to sustain cyclic, high-density lynx populations.

Trapping records are the best, long-term lynx data available. Harvest returns are generally indicative of, but do not represent, real population changes because of the number of factors that influence trapper effort and success, such as changes in socioeconomic conditions, season length, quotas and trapping restrictions, and ease of access (Hatler 1988; Mowat *et al.* 1999). Mowat *et al.* (1999) suggest that fur prices likely affect harvest over the short-term but that it may not be valid to compare and contrast inflation-adjusted prices and harvests that occurred decades apart. Mowat *et al.* (1999) conclude trapping can reduce lynx numbers and that lower lynx harvest levels in Canada in the first half of the 20th century were possibly a result of overtrapping. However, prior to 1921, harvest data were maintained by the Hudson Bay Company. Lower lynx harvest returns in Canada coincide with Hudson Bay Company's going out of business and Provinces starting to maintain harvest records; we surmise that the lower harvests are, at least in part, more likely an artifact of changes in recordkeeping.

Human-induced mortality was generally believed to be the most significant source of lynx mortality (Ward and Krebs 1985). Trapping mortality was considered to be entirely additive (i.e., in addition to natural mortality) rather than compensatory (taking the place of natural mortality) (Brand and Keith 1979). However, Canadian researchers determined that natural mortality during the declining phase of the lynx cycle is high; therefore, trapping mortality during some portions of the cyclic decline may compensate for natural mortality (Hatler 1988; Poole 1994; Slough and Mowat 1996; Poole 1997; Mowat *et al.* 1999). Therefore, we recognize that trapping of lynx can be both additive and compensatory, depending on when it occurs in the cycle.

From the mid-1970s until the late 1980s, prices of lynx pelts were at record highs throughout the United States and Canada (Todd 1985; Hatler 1988; Hash 1990). In Montana, the 1974 average pelt price was $63; by 1978 the average price increased over 500 percent to $348 (B. Giddings, *in litt.* 1994). Lynx pelt prices peaked in the mid-1980s at nearly $500 per pelt and remained above $200 per pelt for 12 years until 1989 (B. Giddings, *in litt.* 1994).

In response to declining harvests in the late 1970s and 1980s, Washington, Montana, Minnesota, Alberta, British Columbia, Manitoba, Ontario, Quebec, and Alaska severely restricted or closed their lynx harvest seasons because of concern that lynx populations had been overexploited (Bailey *et al.* 1986; Hatler 1988; Hash 1990; Washington Department of Wildlife 1993; S. Conn, *in litt.* 1990; M. DonCarlos, *in litt.* 1994; B. Giddings, *in litt.* 1994; R. McFetridge, Alberta Environmental Protection, *in litt.* 1994; I. McKay, *in litt.* 1994).

Based on information obtained since the proposed rule, we now recognize that the cyclic peak harvest returns of the early 1960s and 1970s were unprecedented highs for the 20th century (e.g., Figures 8.3 and 8.6 in McKelvey *et al.* 1999b; Figure 9.4 in Mowat *et al.* 1999). Wildlife managers may have expected harvest returns during the 1980s and 1990s to be comparable to the anomalous cyclic peaks of the 1960s and 1970s. When harvest returns failed to be as high as anticipated, managers appear to have interpreted the lower returns to be caused by overtrapping when pelt prices

were high (Bailey *et al.* 1986; Hatler 1988; Hash 1990; Washington Department of Wildlife 1993). We compared the lynx harvest returns in the 1980s and early 1990s to harvest data dating back over a longer period of time (i.e., prior to 1960) and found that lynx harvest returns were not unusual nor appreciably lower than those recorded prior to the 1960s.

Trapping data for the contiguous United States during the 1970s and 1980s is available from Minnesota, Montana, and Washington. Only Minnesota has long-term trapping records (Henderson 1978). Minnesota lynx harvest data indicate cycles approximately every 10–12 years (McKelvey *et al.* 1999b). Lynx harvest in Minnesota was relatively high, but also highly variable, ranging from as low as 0 to as high as 400 per year over the 40 years of recordkeeping (Henderson 1978). The Minnesota harvest is believed to have consisted, at least partially, of lynx dispersing from Canada (Henderson 1978; McKelvey 1999b). The amplitude of Minnesota lynx harvest cycles was high and, therefore, the exceptionally high peaks of the early 1960s and 1970s that are evident in all other regions do not appear extraordinary in the Minnesota data. After two seasons in the mid-1970s when no lynx were harvested, a quota of five lynx was established from 1977 through the 1982 season. This quota presumably influenced trapper effort and likely was a factor in the reduced harvests in the late 1970s and early 1980s. However, the quota was always exceeded by at least three times the quota. Although the quota was further reduced to two in 1983, nine lynx were taken, providing evidence of the continued occurrence of lynx in Minnesota. The Minnesota lynx season has been closed since 1984. Given the history of lynx cycles reflected in Minnesota data, a cycle would have been expected to return between 1983 and 1985. However, strict season limits were in place or the season was closed so that evidence of cycles from harvest data is not available after the mid-1980s. During the decade preceding the 1984 closure, over 160 lynx were trapped despite restrictive quotas beginning in 1977. These levels of harvest do not differ substantially from previous cyclic lows considering the effects of restrictive quotas on trapper effort.

Montana has maintained lynx harvest records since 1950 (see Figure 8.5 in McKelvey *et al.* 1999b). The most conspicuous features of the data are the cyclic peaks in the 1960s and 1970s. There is no clearly evident peak in the 1950s. In the mid-1980s, in response to concerns that lynx were being overharvested when returns did not compare to those of the 1960s and 1970s, Montana set lynx trapping quotas. Over successive years, initial annual quotas were set at 135, 120, and 100, but were established without the benefit of long-term harvest data to gauge the range of cyclic highs and lows. These quotas were not filled. However, if returns in the 1950s are a better indication of average long-term harvest, it is possible that these quotas were unrealistically high. Further, despite the quotas, a small cyclic peak is evident in the early 1980s. Since 1991, the quota has been very low, two annually, and has been filled or slightly exceeded every season. The low quota likely affects trapper effort and masks any recent population cycles that could have been reflected in harvest data. Beginning with the 1999 season, all lynx trapping is closed in Montana unless another State is in need of lynx for a reintroduction, in which case five lynx can be taken and translocated to the reintroduction site.

Harvest data for Washington is available only since 1960 (Figure 8.7 in McKelvey *et al.* 1999b). Without harvest information prior to 1960, we cannot know the range of cyclic lows and highs over time in Washington. The 1960s and 1970s cyclic highs are evident in the harvest data, but the data do not clearly track a 10-year cycle. Following the 1970s peak, there were five seasons during which no lynx were harvested. As a result, low quotas were set and seasons were shortened. However, despite the low quotas and restricted seasons, harvest returns increased during the final three seasons of the 1980s and the numbers of lynx harvested were high relative to past records. The final season in 1989 was the fifth highest return ever recorded in Washington. Although the data is limited, the annual number of lynx harvested increased in the late 1980s, perhaps leading to or indicative of a cyclic high. No harvest data are available since a Statewide lynx trapping closure went into effect in 1990.

At the time that Washington, Minnesota, and Montana closed their seasons, lynx were still being trapped, which demonstrates that lynx persisted in these States. We recognize that the States did not have lynx population trend information and so relied on trapping data, deciding to take conservative measures when trapping returns decreased.

Mowat *et al.* (1999) suspected that high harvest pressure during the low phase in the lynx cycle of the mid-1980s or where trapping intensity was severe may have had more of an impact on lynx populations in the southern part of the range (southern Canada and the contiguous U.S.) than on northern lynx populations (Canada and Alaska) (Mowat *et al.* 1999). Mowat *et al.* (1999) also expected that dispersal by lynx from healthy populations will lead and has led to the repopulation of areas where overtrapping had depleted the local lynx population. Mortality of lynx through legal trapping has been virtually eliminated in the contiguous United States, except in locations where Tribal regulations permit the taking of lynx. We now believe that ongoing precautions taken by States and Provinces to restrict lynx trapping since the 1980s possibly prevented the overharvest of resident populations of lynx. However, the lack of available data (trapping or otherwise) for the past 15 years makes it difficult to discern the effect trapping restrictions may have had on resident populations.

We conclude that in the contiguous United States, lynx populations occur at naturally low densities; the rarity of lynx at the southern portion of the range compared to more northern populations is normal. The rarity of lynx is based largely on limited availability of primary prey, snowshoe hares. At southern latitudes, low snowshoe hare densities are likely a result of the naturally patchy, transitional boreal habitat. Such habitat prevents hare populations from achieving high densities similar to those in the extensive northern boreal forest (Wolff 1980; Buehler and Keith 1982; Koehler 1990; Koehler and Aubry 1994; Hodges 1999a, 1999b; McKelvey *et al.* 1999c). Comparatively low numbers of lynx in the contiguous United States occur not as a result of overtrapping, but because lynx and their prey are naturally limited by fragmented habitat, topography, and climate.

Legal trapping activities for bobcat, coyote, wolverine and other furbearers create a potential for incidental capture of lynx. The threat to resident lynx from legal trapping for other species may be limited in many areas because bobcat or coyote trapping generally occurs outside of areas where lynx would be found, although we know that incidental capture occurs (Wydeven 1998; M. DonCarlos *in litt.* 1994; R. Naney, U.S. Forest Service, pers. comm. 1999). Although we are concerned about the loss of lynx that are incidentally captured, we have no information to indicate that the loss of these individuals has negatively affected the overall ability of the contiguous United States DPS to persist. Additionally, we

believe that lynx have been incidentally trapped throughout the past, and still they persist throughout most of their historic range.

In summary, we conclude that past and present overutilization is not a factor threatening lynx.

Factor C. Disease or Predation.

Disease and predation are not known to be factors threatening Canada lynx.

Factor D. Inadequacy of Existing Regulatory Mechanisms

For the reasons discussed below, existing regulatory mechanisms do not adequately address the needs of the lynx, or reduce the threats to the species or its habitat. Within the contiguous United States range of the lynx, all States, except Oregon, provide the lynx regulatory protection by specifically prohibiting hunting and trapping for lynx. However based on pelt tags records we believe that Oregons trapping programs have not resulted in take of any lynx (Carol Carson, pers. comm. OMA, 2000). Four States classify the lynx as endangered—Vermont (1972), New Hampshire (1980), Michigan (1987), and Colorado (1976). Lynx are classified as ''threatened'' in Washington (1993), ''sensitive'' in Utah (1979), and ''species of special concern'' in Maine (1997), and in Wisconsin are ''protected'' (1997).

Five States classify lynx as small game or furbearers with closed seasons—Idaho (1997), New York (1967), Minnesota (1984), Wyoming (1973), and Montana (1999). It is legal to harvest lynx in Oregon because the lynx is not protected under Oregon State Law. However based on pelt tags records we believe that Oregons trapping programs have not resulted in take of any lynx (Carol Carson, pers. comm. OMA, 2000). The contiguous United States range of the lynx extends across tribal reservation lands and ceded territories of numerous Tribes. Lynx trapping and hunting are permitted under the regulations of some Tribes, although the Confederated Salish and Kootenai Tribes of the Flathead Nation have prohibited the trapping and taking of lynx since 1986 (M. Pablo, Confederated Salish and Kootenai Tribes Tribal Council, *in litt.* 1998). In the Great Lakes Region, lynx harvest is prohibited on off-reservation ceded lands by the Voigt Intertribal Task Force of the Great Lakes Indian Fish and Wildlife Commission and the 1854 Authority of the Bois Forte and Grand Portage Bands (J. Schlender, Voigt Intertribal Task Force of the Great Lakes Indian Fish and Wildlife Commission, *in litt.* 1998; M. Schrage, Fond du Lac Resource Management Division, *in litt.* 1998; M. Myers and A. Edwards, 1854 Authority, *in litt.* 1999). We conclude that current hunting and trapping regulations are not threatening the continued existence of the contiguous United States DPS; however, other regulatory mechanisms, as described below, are inadequate.

Most States across the range of lynx have laws and regulations regarding environmental issues. Indirectly, these regulations may promote the conservation of lynx habitat on non-Federal lands; however, few are specific to lynx habitat conservation. Two programs in the Northeast and in Washington may provide some benefit to the species. The majority of lynx forest types in the Northeast occur on private land, ranging from small residential lots to large industrial timber company ownerships (Harper *et al.* 1990). The Northern Forest Lands Council has a charter to maintain traditional patterns of landownership and use in the Northeast; part of this effort includes a forest inventory (Northern Forest Lands Council, *in litt.* 1994). The maintenance of traditional patterns of landownership may prevent the fragmentation and/or development of lynx habitat.

In response to the Washington State Wildlife Commission listing the lynx as threatened, the Washington Forest Practices Board allowed the three primary, non-Federal land managers of Washington lynx habitat to develop ''special wildlife management plans'' for lynx. Upon approval by Washington Division of Fish and Wildlife, these plans were adopted in lieu of the development of forest practices rules to protect lynx habitat under the State's critical habitat designation. These three land managers have adopted and implemented lynx habitat management plans in Washington—''Lynx Habitat Management Plan for Department of Natural Resources Managed Lands'' (Washington Department of Natural Resources 1996a), ''North American Lynx Habitat Management Plan for Boise Cascade Corporation'' (Whitwill and Roloff 1996), and a plan originally developed by Plum Creek Timber Company and adopted by Stimson Lumber Company ''Salmo-Priest and Little Pend Oreille Lynx Management Plan'' (Gilbert 1996; Duke Engineering and Services 1998). These plans represent efforts to improve habitat conditions for lynx in Washington, but only on State managed lands and those lands managed by the plan developers.

A substantial amount of the primary areas of lynx occurrence is on National Forest Service lands (Cascades (99 percent), Northern Rockies (67 percent), Southern Rockies (76 percent), Great Lakes (19 percent), Northeast (7 percent)) (U.S. Forest Service and Bureau of Land Management 1999). National Forest Management Act regulations (36 CFR 219.19) provide the following direction to the Forest Service—''Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species.'' Additionally, the lynx is classified as a sensitive species by all Forest Service regions within the contiguous United States lynx range. There is no regulatory mandate specific to sensitive species; however, the Forest Service Manual (FSM 2670.32) provides the following policy guidance for sensitive species—''avoid or minimize impacts to sensitive species; if impacts cannot be managed to maintain viable populations, a decision must not result in loss of existing native and desired non-native vertebrate species viability or create a significant trend toward Federal listing.'' At present, Federal land management plans do not adequately address lynx, as described below.

The LCAS was developed to provide a consistent and effective approach to conserving lynx on Federal lands in the contiguous United States (U.S. Forest Service *et al.* 1999). The overall goals of the LCAS were to recommend lynx conservation measures, provide a basis for reviewing the adequacy with regard to lynx conservation of Forest Service and BLM land and resource management plans, and facilitate conferencing and consultation under section 7 of the Act, should the lynx be listed. The LCAS identifies an inclusive list of 17 potential risk factors for lynx that may be addressed under programs, practices, and activities within the authority and jurisdiction of Federal land management agencies. For example, these risk factors include programs or practices that result in: Habitat conversion, fragmentation or obstruction to lynx movement; roads or winter recreation trails that facilitate access to historical lynx habitat by competitors; and fire exclusion, which changes the vegetation mosaic maintained by natural disturbance processes. The risks identified in the LCAS are based on effects to either individual lynx or population segments, or both. Therefore, we do not necessarily consider all of the risks identified in the LCAS to be factors threatening the contiguous United States DPS of lynx. For example, one risk factor identified for the Southern Rockies Region is accidental death to

individual lynx from being hit by a vehicle while crossing roads. While this may result in incidental take of lynx, it is not considered to be a significant threat to the contiguous United States DPS.

The DBA determined that Federal land management plans are likely to adversely affect the lynx (U.S. Forest Service and Bureau of Land Management 1999). The DBA identified potential effects resulting from 57 Forest Service Land and Resource Management Plans (Plans) and 56 BLM Land Use Plans (Plans) within the 16-State area where lynx were proposed for listing. The direction found in the Plans was compared to direction proposed in the LCAS. If it were determined that a Plan may adversely affect either an individual lynx or a population segment through failure to meet any one of the programmatic conservation measures in the LCAS (U.S. Forest Service *et al.* 1999), then the Plan was deemed overall as likely to adversely affect lynx (U.S. Forest Service and Bureau of Land Management 1999). In other words, a risk was deemed harmful to lynx if the possibility of any adverse effect existed due to Plan direction or if the Plans did not address lynx conservation issues.

The Federal agencies chose a conservative approach in determining whether Plans might result in adverse effects to lynx. The determination was based only on what the Plans directed or allowed, not on a quantitative assessment of the effects to lynx from actual actions as a result of past or current implementation of the Plans. We acknowledge that many activities allowed by Plans, such as timber harvest and road construction, are never carried out for a variety of reasons, such as funding limitations and environmental, wildlife or policy considerations (U.S. Forest Service and Bureau of Land Management 1999).

The DBA identifies 15 criteria that contribute to some level of adverse effects to either an individual lynx or a population segment through failure to meet any one of the programmatic conservation measures in the LCAS. These criteria included, but are not limited to, precommercial thinning, fire management, landscape patterns, winter recreation, and monitoring. Individually, these criteria may not impart substantial impacts on the DPS, however, current Plans do allow actions that cumulatively could result in significant detrimental effects to the DPS. We cannot predict the future levels of impacts to lynx that would result from continued implementation of current Plans. However, the DBA concludes that there is reasonable potential for adverse effects to lynx as a result of actions directed or allowed by existing Plans. Because the Forest Service and BLM manage a substantial amount of lynx forest types in the contiguous United States, particularly in the West, it is imperative that lynx habitat and habitat for lynx prey be maintained and conserved on Federal lands. Though a large percentage of these lands are in nondevelopmental status, a large proportion remain subject to management under multiple use mandates. Until Plans adequately address risks such as those identified in the LCAS, we conclude that the lack of Plan guidance for conservation of lynx, and the potential for Plans to allow or direct actions that adversely affect lynx (as evidenced by the assessment in the DBA), is a significant threat to the contiguous United States DPS of the lynx. On February 4, 1977, the lynx was included in Appendix II of the CITES. The CITES is an international treaty established to prevent international trade that may be detrimental to the survival of plants and animals. A CITES export permit must be issued by the exporting country before an Appendix II species may be shipped. The CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired; however, CITES does not itself regulate take or domestic trade and therefore does not contribute to protection of the lynx in the United States.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Based on mapping of lynx forest types for the contiguous United States (McKelvey *et al.* 1999b), we know that the southern boreal forests that support lynx and hares in the contiguous United States are naturally fragmented and disjunct compared with the northern boreal forests in Canada and Alaska (see ''Background'' section). Connectivity of appropriate habitat types and cover provide travel corridors between habitat patches, thereby increasing the likelihood of successful lynx dispersal. However, we know that lynx can traverse a variety of habitat types and obstacles, including rivers, nonforested habitats, and various types of roads, based on records of lynx occurrences in habitats and locations far from their traditional range and forest habitat types, such as Nebraska, Nevada, Iowa, and South Dakota (Aubry *et al.* 1999; McKelvey *et al.* 1999b; Ruggiero et al. 1999b).

For most areas of the contiguous United States, we have no evidence that human-caused factors have significantly reduced the ability of lynx to disperse or have resulted in the loss of genetic interchange. No information is currently available to identify whether any genetic concerns exist for lynx in the contiguous United States.

In western regions of lynx range, naturally fragmented patches of lynx habitat, typically occurring along mountain ranges, are often connected by a variety of intervening habitats, including shrub steppe, grassland, low-elevation forested or unforested valleys, and in some cases, desert. This natural fragmentation becomes more pronounced in the more southern extremes of lynx range. We have little information to compare these intervening landscapes to the historical condition, nor do we fully understand the environmental or physiological requirements of lynx as they attempt to disperse across them. We do know that much of the intervening landscapes between patches of lynx forest types in the Northern Rockies/Cascades is either used for agriculture or is Federal land; human population centers and other large human developments are limited across the western range of lynx.

In the Northeast, development along the St. Lawrence seaway and ice breaking for winter navigation may reduce the ability of lynx to move between northern Quebec and the area south of the St. Lawrence that includes southern Quebec, New Brunswick, Nova Scotia, and the northeastern United States (R. Lafond, pers. comm. 1999). Historically, lynx populations in the Northeast were periodically supplemented with transient or dispersing individuals from northern Quebec (Litvaitis *et al.* 1991). South of the St. Lawrence, movement is still possible between southeastern Quebec, western New Brunswick, Maine and New Hampshire, because the habitat is contiguous along the Appalachian Mountains and there are no natural or human-caused barriers to dispersal.

In the Great Lakes Region, winter navigation on the St. Mary's River between Ontario and Michigan's Upper Peninsula may reduce the ability of lynx to migrate across the St. Mary's shipping channel from Ontario to Michigan (Robinson and Fuller 1980).

Lynx movements may be negatively influenced by high traffic volume on roads that bisect suitable lynx habitat. In southern British Columbia, lynx movements and selection of home ranges appear to be influenced by highways (Apps 1999). Apps (1999) surmised that highway influence on lynx varies according to local habitat conditions, roadway width, traffic

volume, and possibly gender and reproductive status of individual lynx. Given the distances and locations where known lynx within the southern boreal forest have moved, we know that lynx successfully cross many types of roads, including unpaved forest roads, secondary paved roads, State and interstate highways (Mech 1980; Smith 1984; Brainerd 1985; Aubry *et al.* 1999; Squires and Laurion 1999). We suspect that highways with high volumes of traffic and associated suburban developments inhibit lynx home range movement and dispersal, and may contribute to loss of habitat connectivity. Such highways occur in the Southern Rockies Region connecting cities, towns, and ski areas, and also in the Northern Rockies/Cascade Region through the Cascade Range along the Columbia River. However, no information currently exists to determine the level at which traffic volume or roadway design may influence lynx movements or create an impediment to movement.

Although we assume that high-volume, high-speed traffic presents a barrier to dispersal, roads do not appear to be a significant direct cause of lynx mortality (Staples 1995; Ruggiero *et al.* 1999b). Few records exist of native lynx being killed by vehicles (Wydeven 1998; M. DonCarlos, *in litt.* 1994). None of the animals tracked by radiotelemetry in various studies throughout the contiguous United States were killed in vehicle accidents (Aubry *et al.* 1999). The majority of records of lynx mortalities from vehicle accidents are of recently translocated animals, who generally move large distances before settling (Brocke *et al.* 1991; Brocke *et al.* 1993; G. Byrne, Colorado Division of Wildlife, pers. comm. 1999). The high incidence of translocated lynx killed by cars is likely not typical of resident lynx populations in southern boreal forests (Aubry *et al.* 1999).

At the time of the proposed rule, we thought that the existence, density, and human use of unpaved forest roads also negatively impacted resident lynx populations by causing displacement or avoidance by lynx and degradation of lynx habitat. Evidence now available indicates that lynx tolerate some level of human disturbance (Staples 1995; Aubry *et al.* 1999; Bailey and Staples 1999; Mowat *et al.* 1999). No evidence exists that human presence displaces lynx. Although information regarding indirect effects of roads on lynx populations is lacking, recent analyses on the Okanogan National Forest in Washington indicate that lynx show no preference or avoidance of forest roads, and that road density does not appear to affect lynx habitat selection (McKelvey *et al.* 1999c). Lynx have been documented using some types of roads for hunting and travel (Parker 1981; Koehler and Brittell 1990; Koehler and Aubry 1994). We find no information demonstrating that forest roads negatively impact resident lynx populations.

In the proposed rule, we stated that increasing ease of human access into forests increased the vulnerability of lynx to intentional or unintentional shooting and trapping (Todd 1985; McKay 1991; Washington Department of Wildlife 1993; Koehler and Aubry 1994). We know that lynx are taken during legal trapping and hunting for other species, such as wolverine and bobcat, even when lynx seasons are closed (McKay 1991; Staples 1995; Wydeven 1998; M. DonCarlos *in litt.* 1994; R. Naney, pers. comm. 1999). We do not know how many lynx may be purposefully poached, but are concerned about radio-collared lynx that have been killed but not reported (G. Byrne, pers. comm. 1999; M. Amaral, pers. comm. 1999). No reliable recordkeeping exists to determine how frequently such taking occurs, nor if it has increased because of the increasing accessibility of forests. Further, lynx were likely captured incidentally in the past during regulated and unregulated trapping for other predators, and still they have persisted throughout much of their historic range. We are concerned about the loss of lynx through legal or illegal trapping and shooting; however, we have no information to indicate that the loss of these individuals is negatively affecting the overall ability of the contiguous United States DPS to persist (see ''Factor B'' of this section).

In the proposed rule, we considered displacement or elimination of lynx when competitors (e.g., bobcat, coyote) expand into lynx range (de Vos and Matel 1952; Parker *et al.* 1983; Quinn and Parker 1987) to be a significant threat to the contiguous United States DPS of lynx. At this time, there are no data on competition between lynx and other species; therefore, we have only information on behavior of possible competitors from which to gain some inferences about the possibility of competition and its impact on lynx.

Coyote, bobcat, and mountain lion are hypothesized to be potential lynx competitors (Brocke 1982; McCord and Cardoza 1982; Parker *et al.* 1983; Quinn and Parker 1987; Aubry *et al.* 1999; Buskirk *et al.* 1999a; Ruggiero *et al.* 1999b). In the Northeast and Great Lakes regions of the contiguous United States range of the lynx, bobcat and coyote ranges generally overlap with lynx. In the Northern Rockies/Cascades and Southern Rockies lynx generally overlap with bobcat, coyote and mountain lion. Lynx are highly evolved for hunting in deep snow: they have a morphological advantage because they are able to walk on snow rather than sink into it as do species with higher foot loads, such as the coyote, bobcat, or mountain lion (Murray and Boutin 1991; Buskirk *et al.* 1999a). Traditionally, where these species' ranges overlap with that of lynx, snow conditions exclude them from the winter habitats occupied by lynx (McCord and Cardoza 1982; Parker *et al.* 1983; Quinn and Parker 1987; Buskirk *et al.* 1999a).

However, today competition may be facilitated through human alteration of forests, creating habitats that may be more suitable to potential lynx competitors (McCord and Cardoza 1982; Quinn and Parker 1987; Buskirk *et al.* 1999a). The range of the coyote has significantly expanded, snowshoe hares are important prey for both coyotes and bobcats, mountain lion numbers appear to have increased, mountain lions have killed lynx, and snowtrails packed by humans facilitate the movement of potential lynx competitors into the deep snow habitats of the lynx.

Researchers believe the coyote's original range prior to European settlement was the North American Great Plains but over the past century its range has substantially expanded in all directions (Nowak 1979; 1999; Parker 1995). Nearly the entire North American range of the lynx now overlaps with that of the coyote. Coyotes expanded into the far western States in the mid to late 1800s, the western Great Lakes states in the early 1900s, and the Northeast by the 1950s (Nowak 1979, 1999; Parker 1995). Coyotes are generalist predators, feeding on rabbits and hares, rodents, deer, and plants (Parker 1995). In northern latitudes, particularly in winter, where the diversity of food items is limited, snowshoe hares are a primary food item for coyotes (Parker 1995; Staples 1995); the concern regarding competition with lynx stems primarily from diet overlap.

Extirpation of the wolf (*Canis lupus*) is one factor believed to have enabled the coyote to extend its range (Parker 1995). As wolf populations expand in the Northern Rockies Region in Montana, Idaho, and Wyoming, and the Great Lakes Region in Minnesota, Wisconsin, and Michigan, we expect coyote populations may be reduced (Crabtree and Sheldon 1999). An indirect result may be a reduction in the potential for coyotes to affect lynx in areas of overlap between lynx and wolves.

The range of the bobcat overlaps the lynx range within the contiguous United States and southern Canada. Like the coyote, the bobcat is a generalist predator that feeds on a wide variety of prey, including snowshoe hares (McCord and Cardoza 1982; Koehler and Hornocker 1991). Although lynx in the southern boreal forests evolved with bobcats, competition between these species is suspected because of their similar size and appearance (Buskirk *et al.* 1999a). Bobcats remain restricted to areas with low snow depths (Koehler and Hornocker 1991; Buskirk *et al.* 1999a). Parker *et al.* (1983) speculated that bobcats displaced lynx from all areas on Cape Breton Island, Nova Scotia, except high elevations, where snow accumulation limited the bobcat's range. We have no evidence that competition with bobcats has negatively affected the contiguous United States DPS.

Buskirk *et al.* (1999a) advanced the theory that mountain lions compete with lynx, based on a few records of mountain lions killing lynx and presumed increasing mountain lion populations. Interactions between lynx and lions would most likely occur during snowfree seasons because lions generally do not occupy the same winter habitats as lynx (H. Quigley, Hornocker Wildlife Institute, pers. comm. 1999). It is generally accepted that mountain lion numbers in the West have increased, therefore the rate of encounters between lynx and mountain lions has probably increased (H. Quigley, pers. comm. 1999). Deer (*Odocoileus* spp.) are the primary prey of mountain lions (Dixon 1982) and are an important food item for coyotes (Parker 1995) and bobcats (McCord and Cardoza 1982; Koehler and Hornocker 1991). In Idaho, mountain lion kills were frequently visited by bobcats and coyotes (Koehler and Hornocker 1991). Lions kill coyotes and bobcats, often in defense of food caches (Boyd and O'Gara 1985; Koehler and Hornocker 1991). Lynx occasionally feed on ungulates or scavenge from carcasses (Brand *et al.* 1976); we expect interactions between mountain lions and lynx would most likely occur in defense of food caches, as with coyotes and bobcats. Despite numerous mountain lion studies within the western range of the lynx, incidents of lions killing lynx are extremely rare (H. Quigley, pers. comm. 1999). No evidence exists that mountain lions exert a population-level impact on lynx.

Historically, interactions between lynx and potential competitors were limited in winter because most competitors cannot effectively move through the deep snow habitats of the lynx (Buskirk *et al.* 1999a). Now, ski and snowmobile trails and roads that are maintained for winter recreation and forest management create packed snow corridors that give other species access to lynx winter habitat (Koehler and Aubry 1994; U.S. Forest Service *et al.* 1999), although significant amounts of habitat remain relatively undisturbed by humans in the interior of large blocks of lynx forest types on Federal lands in the West, especially in designated wilderness and National Parks (U.S. Forest Service and Bureau of Land Management 1999). It appears that bobcats remain restricted to areas with low snow depths (Koehler and Hornock 1991; Buskirk *et al.* 1999a), and that lynx and lion winter habitats typically do not overlap (H. Quigley, pers. comm. 1999).

Coyotes use packed snowtrails and now occupy the winter habitats of lynx (Murray and Boutin 1991; Murray *et al.* 1994; Staples 1995; O'Donoghue *et al.* 1997, 1998a, 1998b) and, therefore, are a concern as a potential lynx competitor in winter. Studies of lynx, coyotes, and hares from the Yukon Territory and Alaska provide some information with which to consider potential for competition between lynx and coyote in winter (Murray and Boutin 1991; Murray *et al.* 1994; Staples 1995; O'Donoghue *et al.* 1997, 1998a, 1998b). Coyotes adapted their behavioral patterns for hunting in snow by selecting snow that was shallower and harder; whereas lynx successfully hunted in all habitats where hares were found (Murray and Boutin 1991; Murray *et al.* 1994; O'Donoghue *et al.* 1998a). Coyotes and lynx both preferred snowshoe hares over alternate prey during all phases of the hare cycle (O'Donoghue *et al.* 1998a). During the snowshoe hare decline, lynx switched to hunting red squirrels, whereas coyotes switched to hunting voles (O'Donoghue *et al.* 1998b). In Alaska, Staples (1995) believes that the 42 percent dietary overlap between lynx and coyote observed during a cyclic low in the hare cycle indicated the potential for competition; however, we are not aware of research or other evidence indicating that coyote competition has negatively affected the lynx populations in Canada. In fact, we expect that the variability of snow conditions and frequency of fresh snows in the winter habitats that support lynx continually reduce or alter the availability of snowtrails and shallow snow depths used by coyotes in lynx habitat, making it more difficult for coyotes to effectively hunt in these areas regularly during the winter. No evidence exists indicating that coyote competition has negatively affected the contiguous United States lynx DPS (Aubry *et al.* 1999).

Little is known about lynx habits in snow-free seasons. A greater diversity of prey and habitats available during this time may reduce the negative effects of competition. Furthermore, because lynx have co-evolved with bobcats and mountain lions, and in most areas lynx have coexisted with coyotes for many decades, we suspect some level of segregation of habitat and prey among these species. In summer in Idaho, coyotes, bobcats, and mountain lions used different topographic and habitat features, allowing habitat and prey resources to be partitioned among these species; coyotes used lower elevations than bobcats who used lower elevations than lions (Koehler and Hornocker 1991). All of the elevations used in this study were within the range recorded for lynx occurrences in the West (McKelvey *et al.* 1999b); however, the data for lynx were not recorded by season. We suspect these data are more representative of elevations lynx use in winter rather than snow-free seasons because much of the lynx data are from trapping records, an activity that occurs during winter.

In summary, we conclude lynx movements may be negatively influenced by high traffic volume on roads that bisect suitable lynx habitat, such as in the Southern Rockies and in some parts of the Northern Rockies/Cascades Region. We suspect that highways with high volumes of traffic and associated suburban developments inhibit dispersal and movements within home ranges, and may contribute to loss of habitat connectivity. However, roads do not appear to be a significant direct cause of lynx mortality. We find no information demonstrating that forest roads negatively impact resident lynx populations. Packed snowtrails facilitate the movement of coyotes into formerly inaccessible deep snow habitats occupied by lynx; however, we have no evidence that competition with coyotes, mountain lions or bobcats is negatively affecting lynx at a population-level scale.

Finding

We conclude that, in the contiguous United States, lynx populations occur at naturally low densities and that the rarity of lynx at the southern portion of their range compared to more northern populations is normal. This rarity is based largely on low densities of snowshoe hares, their primary prey. Low snowshoe hare densities are likely a result of naturally patchy, transitional

boreal habitat at southern latitudes that prevents hare populations from achieving densities similar to those in the extensive northern boreal forest of Canada. Low numbers of lynx reflected in harvest data for the contiguous United States are not a result of overtrapping, but of naturally limiting fragmentation, topography, and climate. Lynx in the contiguous United States are the southernmost extension of a larger metapopulation whose core is in central Canada.

We conclude the single factor threatening the contiguous U.S. DPS of lynx is the inadequacy of existing regulatory mechanisms, specifically the lack of guidance for conservation of lynx in National Forest Land and Resource Plans and BLM Land Use Plans as described in Factor D. Until Plans adequately address risks such as those identified in the LCAS, and described generally in Factors A, B and E, we conclude that the lack of Plan guidance for conservation of lynx, as evidenced by the fact that Plans allow or direct actions that cumulatively adversely affect lynx (as indicated by the assessment in the DBA), is a significant threat to the contiguous U.S. DPS of lynx. Therefore, we find that listing the lynx within the contiguous United States as threatened is necessary.

We conclude that Federal land management assumes the largest single role in the conservation of lynx in the contiguous United States because of the preponderance of lynx forest types on Forest Service, BLM, and National Park Service lands, particularly in the western United States. A substantial amount of lynx forest types occur on Forest Service and BLM lands (Northern Rockies-72 percent, Cascades-99 percent, Southern Rockies-82 percent, Great Lakes-19 percent, Northeast-7 percent). We believe that the large amount of lynx forest types properly managed in nondevelopmental allocations, especially in designated wilderness areas, and amendments to existing land use plans, such that management of lynx forest types in developmental areas does not conflict with lynx conservation, will be a substantial benefit to lynx in the Northern Rockies/Cascades and Southern Rockies and will contribute significantly to the likelihood of conserving lynx into the future within the contiguous United States.

It is imperative that snowshoe hare and alternate prey populations be supported by appropriate habitat management on Federal lands into the future to ensure the conservation of lynx in the contiguous United States. Substantive declines in prey species, especially snowshoe hare, may result in a prey base insufficient to support lynx persistence.

Factors affecting lynx status vary among regions of the contiguous United States. The Northern Rockies/Cascades Region supports the largest amount of lynx habitat and has the strongest evidence of resident lynx populations, both historically and currently. This region has strong habitat connections to lynx populations in Canada, as well as large proportions of lynx habitat in wilderness and other areas with limited human influence. The Northern Rockies/Cascades Region has the highest potential to maintain a viable lynx population within the contiguous United States. Available evidence suggests that lynx populations within this region fluctuate, and we have no information suggesting a declining population trend. The primary factor affecting lynx in this region is the inadequacy of existing regulatory mechanisms, specifically the lack of guidance for conservation of lynx in Federal land management plans.

In the Southern Rockies Region, lynx habitat is naturally limited and highly fragmented, which leads us to conclude that lynx were rare historically. We conclude native lynx may now be extirpated from this region. The factors affecting lynx in this region are the inadequacy of existing regulatory mechanisms, specifically the lack of guidance for conservation of lynx in Federal land management plans, and loss of habitat connectivity resulting from high-use highways and associated suburban development.

The historic and current status of lynx in the Great Lakes Region is uncertain. We lack information to determine whether lynx in this region are simply dispersing from Canada, are members of a resident population, or are a combination of a resident population and dispersing individuals. Much of this region contains marginal habitat that may not sustain resident lynx populations. The factors affecting lynx in this region include the inadequacy of existing regulatory mechanisms, specifically the lack of guidance for conservation of lynx in Federal land management plans, and timber harvest and fire suppression on non-Federal lands.

In the Northeast, lynx reproduction and individual animals have recently been documented in Maine. Recent lynx harvests were substantial in adjacent southeastern Quebec. Therefore, we conclude that a resident population of lynx continues to exist in the core of the region; however, the range may have retracted northward. The main factor affecting lynx forest types in this region is timber harvest on non-Federal lands, although the extent of influence of current forest practices on lynx is not known.

Within the contiguous United States, the relative importance of each region to the persistence of the DPS varies. The Northern Rockies/Cascades Region supports the largest amount of lynx habitat and has the strongest evidence of persistent occurrence of resident lynx populations, both historically and currently. In the Northeast (where resident lynx populations continue to persist) and Southern Rockies regions, the amount of lynx habitat is naturally limited and does not contribute substantially to the persistence of the contiguous United States DPS. Much of the habitat in the Great Lakes Region is naturally marginal and may not support prey densities sufficient to sustain lynx populations. As such, the Great Lakes Region does not contribute substantially to the persistence of the contiguous United States DPS. Collectively, the Northeast, Great Lakes, and Southern Rockies do not constitute a significant portion of the range of the DPS. We conclude the Northern Rockies/Cascades Region is the primary region necessary to support the continued long-term existence of the contiguous United States DPS. However, the role that each region plays in the long-term conservation of the species will be explored further in recovery planning for the species.

Critical Habitat

Critical habitat is defined in section 3(5)(a) of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The term ''conservation'' as defined in section 3(3) of the Act means ''to use and the use of all methods and procedures necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary,'' that is, the species is recovered and can be removed from the list of endangered and threatened species.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the

maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform required analysis of impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires us to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the conservation benefits, unless to do so would result in the extinction of the species.

In the proposed rule, we indicated that designation of critical habitat was not prudent for the Canada lynx because it could increase the vulnerability of lynx to poaching, because the species and its habitat are continually shifting spatially and temporally across the landscape making static designation of specific areas of little benefit to the species, and because designation of broad geographic areas would necessarily include many areas of unsuitable habitat that would not be used by and would not be critical to the species. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as threatened.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent. Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for Canada lynx would be prudent.

The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat also would be likely to adversely affect the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There also may be some educational or informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for Canada lynx.

As explained in detail in our Final Listing Priority Guidance for Fiscal Year 2000 (64 FR 57114), our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for Canada lynx allows us to concentrate our limited resources on higher priority critical habitat (including court ordered designations) and other listing actions, while allowing us to put in place protections needed for the conservation of Canada lynx without further delay. However, because we have successfully reduced, although not eliminated, the backlog of other listing actions, we anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for the Canada lynx as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 6's listing budget must be directed to complying with court orders and settlement agreements, as well as due and overdue final listing determinations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

The Forest Service and the Fish and Wildlife Service recently signed a Lynx Conservation Agreement (Feb 2000) to promote the conservation of lynx and lynx habitat on Federal lands managed by the Forest Service. It identifies actions the signatories agree to take to reduce or eliminate adverse affects or risks to lynx and lynx habitat. Implementation of these actions within this agreement will provide immediate benefits to lynx.

Section 9 of the Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered or threatened wildlife. The prohibitions, codified at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the

propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. For threatened species, permits also are available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994, to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act (59 FR 34272). The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. For the contiguous United States population of wild lynx, we believe the following actions would not likely result in a violation of section 9 of the Act:

(1) Actions that may result in take of wild lynx in the contiguous United States that are authorized, funded, or carried out by a Federal agency when the action is conducted in accordance with an incidental take statement issued by us pursuant to section 7 of the Act;

(2) Actions that may result in take of wild lynx in the contiguous United States when the action is conducted in accordance with a permit issued under 50 CFR 17.32 or special rule issued under section 4(d) of the Act. These activities include take for educational purposes, scientific purposes, the enhancement of propagation or survival, zoological exhibition, and other conservation purposes consistent with the Act.

For the contiguous United States population of captive lynx, we believe the following actions would not likely result in a violation of section 9 of the Act:

(1) Take, transport, possess, sell, deliver, and receive of captive lynx and export of captive lynx or their pelts under valid CITES export permits.

For the contiguous United States population of wild lynx, the following actions likely would be considered a violation of section 9 of the Act:

(1) Take of wild lynx (including both purposeful and incidental)

(2) Possessing, selling, delivering, carrying, transporting, or shipping illegally taken lynx;

(3) Export of lynx or lynx parts or products (including pelts) without a permit under section 17.32 (a CITES permit would also be required in order to be in compliance with CITES);

(4) Significant lynx habitat modification or degradation to the point that it results in death or injury by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

For the contiguous United States population of captive lynx, the following would likely constitute a violation of section 9 of the Act:

(1) export of any lynx part or products other than a properly tagged pelt or permitted parts or products;

For lynx that occur outside of the contiguous United States (Alaska and Canada), the Endangered Species Act listing and companion 4(d) have no effect. Lynx in those areas, as well as in the contiguous United States, remain covered by the designation of Appendix II under CITES. Therefore, the import of lynx into the United States and the transportation of lynx from Alaska to the contiguous United States may continue under current procedures established by State law and CITES.

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to United States Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

Special Rule

Section 4(d) also states that the Service may, by regulation, extend to threatened species, prohibitions provided for endangered species under section 9. Our implementing regulations for threatened wildlife (50 CFR 17.31) incorporate the section 9 prohibitions for endangered wildlife, except when a special rule is promulgated pursuant to section 4(d) applies (50 CFR 17.31(c)).

This special rule applies the general take prohibitions for threatened wildlife to the wild population of Canada lynx in the contiguous United States. It also provides for the continuation of the take and export of captive lynx and their pelts under Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) export permits and provides for the transportation of lynx pelts in commerce within the United States. The export of properly tagged (with valid CITES export tag) pelts from lynx documented as captive is not prohibited under the special rule. Properly tagged pelts may be transported in interstate trade without permits otherwise required under 50 CFR 17.32.

CITES is an international treaty for the regulation of international trade in certain animal and plant species. The lynx was included in CITES Appendix II on February 4, 1977, as a part of the listing of all Felidae that were not already included in the appendices. A CITES export permit pursuant to 50 CFR part 23 must be issued by the exporting country before an Appendix II species may be shipped. All Felidae are included in Appendix II to enable better protection of look-alike species that were or could be threatened with extinction without strict regulation of trade. After the lynx (as well as the bobcat and river otter) were included in CITES Appendix II, we worked with the States to develop guidelines for State programs that would provide the information needed to satisfy CITES export requirements. Under the State CITES export programs, all pelts to be exported are required to be tagged with a permanently attached, serially numbered tag that identifies the species, State of origin, and season of taking. The tags are provided to the States and Tribes by the Service. In the past the States that have been approved for export of captive or wild lynx are Alaska, Idaho, Minnesota, Montana, and Washington. In the last few years Idaho, Minnesota and Washington have had zero quotas or closed seasons, and Montana has had a quota of two to three wild lynx trapped per year. Due to the listing all of the States in the contiguous U.S. will no longer be approved for export of wild lynx; Lynx in Alaska are not encompassed by this listing; all existing CITES requirements remain the same for lynx originating in Alaska.

Currently facilities in Idaho, Minnesota, Montana, North Dakota, and Utah raise captive lynx for commercial purposes. At least some of the farms report that their initial stock was obtained from Canada. From 1992 through 1997, Minnesota and Montana reported that a total of 169 lynx pelts were tagged for export under the CITES program and these primarily originated from farmed animals. These captive-bred specimens have neither a positive nor negative effect on the species in the wild.

Current prices for lynx pelts are low so there is little present incentive to trap wild lynx. However, an increase in pelt prices could create a strong incentive to trap wild lynx and export their pelts. Lynx are easy to trap, and the illegal take of lynx would present an enforcement and inspection problem for Service personnel. Since they look the same, captive lynx pelts cannot be effectively differentiated from wild lynx pelts by Service law enforcement and inspection personnel without proper tagging.

This final rule would allow the export from the United States of live captive lynx or their pelts if the pelt is tagged with a CITES export tag and accompanied by a valid CITES export permit. The import of lawfully obtained live lynx or their parts or products

would continue to require the necessary CITES export permits from the exporting country, but no additional permits under 50 CFR 17.32 would be required. CITES permit requirements are found in 50 CFR part 23.

In summary, CITES permits will be required for the export of captive lynx or their parts or products from the United States. No permits under 50 CFR 17.32 will be required for the importation of lynx or their parts or products into the United States or for interstate commerce in pelts that are properly tagged with valid CITES export tags. However, interstate commerce of untagged pelts is prohibited.

Similarity of Appearance

In the proposed rule we proposed listing the wild population of lynx in the contiguous United States as threatened, and we proposed listing the captive population separately under the similarity of appearance provisions of the Act (section 4(e)). We proposed listing the captive population under the Similarity of Appearance provisions in order to aid law enforcement efforts to protect the wild populations. Upon further review we have determined that separate listings of the wild and captive populations are not necessary. Instead, we have revised the special 4(d) rule accompanying this listing rule to establish prohibitions for the wild and captive populations separately.

Paperwork Reduction Act for the Listing Rule

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened wildlife, see 50 CFR 17.32.

Required Determinations for the Listing and Special Rule

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget, under Executive Order 12866. We completed a Record of Compliance for the 4(d) rule, and published a notice of availability for the Record of Compliance in the **Federal Register** on July 26, 1999 (64 FR 40333). A copy can be obtained by contacting the Montana Field Office (see **ADDRESSES** section).

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined in the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Montana Field Office (see **ADDRESSES** section).

Author(s)

The primary authors of this document are Lori Nordstrom and Anne Vandehey, Montana Field Office, Helena, Montana; and Janet Mizzi, Mountain-Prairie Regional Office, Denver, Colorado.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under ''MAMMALS,'' to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	* *		*		*
Lynx, Canada	*Lynx canadensis*	U.S.A. (AK, CO, ID, ME, MI, MN, MT, NH, NY, OR, UT, VT, WA, WI, WY) Canada.	CO, ID, ME, MI, MN, MT, NH, NY, OR, UT, VT, WA, WI, WY.	T	692	NA	17.40 (k)
*	*	*	* *		*		*

3. Section 17.40 is amended by adding paragraph (k) to read as follows:

§ 17.40 Special rules—mammals

* * * * *

(k) Canada lynx (*Lynx canadensis*).

(1) *What lynx does this special rule apply to?* The regulations in this paragraph (k) apply to all wild and captive lynx in the contiguous United States.

(2) *What activities are prohibited for wild lynx?* All prohibitions and provisions of 50 CFR 17.31 and 17.32 apply to wild lynx found in the contiguous United States.

(3) *What is considered a captive lynx*?

(i) For purposes of this paragraph (k), captive lynx means lynx, whether alive or dead, and any part or product, if the specimen was in captivity at the time of the listing, born in captivity, or lawfully imported or transported into the contiguous United States.

(ii) Lynx that were either born or held in captivity and then released into the wild are considered wild.

(4) *What activities are allowed for captive lynx*?

(i) *Take.* You may take lawfully obtained captive lynx without a permit.

(ii) *Import and export.* You may export captive live lynx, parts or products of captive lynx provided the

specimens are tagged with Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) export tags and/or accompanied by a valid CITES export permit. You may import lawfully obtained lynx that originated outside the United States when you follow the requirements of CITES.

(iii) *Interstate commerce.* You may deliver, receive, carry, transport, ship, sell, offer to sell, purchase, or offer to purchase in interstate commerce captive lynx and captive lynx parts and products in accordance with State or tribal laws and regulations. In addition, lynx pelts that are properly tagged with valid CITES export tags also qualify for this exemption on interstate commerce.

(5) *Are any activities not allowed or restricted for captive lynx*? You must comply with all applicable State and tribal laws and regulations. Violation of State or tribal law will also be a violation of the Act.

Dated: March 16, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–7145 Filed 3–21–00; 8:45 am]

BILLING CODE 4310–55–p

Federal Register

Friday,
March 24, 2000

Part VI

Department of Education

Office of Elementary and Secondary Education; Safe and Drug-Free Schools and Communities National Programs—Federal Activities Grants Program—The Challenge Newsletter; Notices

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Safe and Drug-Free Schools and Communities National Programs—Federal Activities Grants Program—The Challenge Newsletter

AGENCY: Department of Education.

ACTION: Notice of final priority and selection criteria for fiscal year 2000 and subsequent years.

SUMMARY: The Assistant Secretary announces a final priority, eligible applicants, and selection criteria for fiscal year (FY) 2000 and, at the discretion of the Assistant Secretary, for subsequent years under the Safe and Drug-Free Schools and Communities National Programs—Federal Activities Grants Program. The Assistant Secretary takes this action to focus Federal financial assistance on an identified national need—the development and dissemination of a newsletter with information about effective practices to prevent drug use and violent behavior among youth. *The Challenge* newsletter will provide a communication link on current and future program directions, research-based activities, and other information related to effective drug and violence prevention strategies between the U.S. Department of Education and State and local educational agencies and other public and private organizations involved with prevention of youth drug use and violent behavior.

EFFECTIVE DATE: This notice takes effect on April 24, 2000.

Eligible Applicants: Eligible applicants under this competition are public and private nonprofit organizations and individuals.

FOR FURTHER INFORMATION CONTACT: Gail Beaumont, Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3E310, Washington, DC 20202–6123, (202) 260–3954. Fax: (202) 260–7767. Internet: gail__beaumont@ed.gov.

An individual who uses a TDD may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register.**

SUPPLEMENTARY INFORMATION: This notice contains the final priority for fiscal year 2000, and related selection criteria. Under the absolute priority, the Assistant Secretary intends to award one cooperative agreement for up to 36 months; this cooperative agreement will support a means of communicating with the field on current and future program directions, research-based activities, and other information related to effective drug and violence prevention practices through *The Challenge* newsletter. The primary audience for *The Challenge* is classroom teachers.

Applicants must demonstrate extensive knowledge of elements of effective drug and violence prevention programs and current research in the area of drug and violence prevention. Funds under the Safe and Drug-Free Schools Program reach 97 percent of the nation's school districts. While most school districts have implemented drug and violence prevention activities in some form, too often these activities are narrow in scope and are not based on science. Many school districts lack data on the effects of their drug and violence prevention programs on student behavior. They need information about programs that have proven to be effective or promising that they can adopt for their students. Although research exists on drug and violence prevention strategies that have positive results, too often this research is not known to school personnel, and does not get translated into practice. *The Challenge* will provide classroom teachers and other professionals with information about effective or promising drug and violence prevention programs and strategies, articles by experts in the prevention field, and other timely information covering a broad range of topics that comprise the expanding knowledge base on drug and violence prevention.

With regard to content, the following information describes examples of topics and types of articles that have been featured in past issues of *The Challenge:*

- Information about principles of effective drug and violence prevention programs.
- Key elements or characteristics of successful drug and violence prevention programs.
- Research studies and data related to drug and violence prevention.
- Articles by recognized experts in fields related to safe and drug-free schools.
- Articles describing model programs.
- Information that describes discretionary grant activities funded under the Safe and Drug-Free Schools and Communities Program, National Programs, including resources and products resulting from the activities.
- Timely information on special topics such as emerging trends in use of specific drugs, or early warning signs of violent behavior.
- Resources and helplines for obtaining information and materials on drug and violence prevention.

While applicants are expected to address in their applications the topics and types of articles described in the above list, the list is by no means comprehensive. Applicants are encouraged to offer suggestions on ways to communicate with the field on a broad range of key issues, including information on classroom practices, assessments, and appropriate strategies.

Frequency of past publication of *The Challenge* has ranged from 6–10 times per year, and the number of pages has ranged from 4–26 pages per issue. The number of copies has been 50,000 per issue. These numbers are offered as guides based on past practice, and are not requirements of the current competition. Applicants are encouraged to offer suggestions regarding the length and frequency of publication, as well as number of copies per issue and dissemination plan.

The applicant funded under the absolute priority in this notice will have the responsibility to design, develop, publish, disseminate, and manage all aspects of *The Challenge* consistent with the specific requirements in the absolute priority below. In submitting their proposals for funding, applicants are encouraged to offer suggestions and ideas for *The Challenge* in addition to those specified in the absolute priority.

Public Comments

On January 25, 2000, the Assistant Secretary published a notice of proposed priority, eligible applicants, and selection criteria for this competition in the **Federal Register** (65 FR 3948–3950). In response to the Assistant Secretary's invitation to comment, the Department received comments from two organizations. In response to the comments received, the Assistant Secretary made two modifications—one to the supplementary information section of the notice and one to the selection criteria—as noted in the analysis of comments and changes and elsewhere in this notice.

Analysis of Comments and Changes

Highlight More Classroom Practices, Assessments, and Appropriate Strategies

Comment: One commenter suggested that, in order to benefit classroom teachers, the content of the newsletter should highlight more classroom practices, assessments, and appropriate strategies rather than the items identified in the **Federal Register**.

Discussion: The Department agrees that the newsletter should include information for classroom teachers such as classroom practices, assessments, and appropriate strategies, but not to the exclusion of other topics listed in supplementary information.

The supplementary information provided in the Notice of Proposed Priority includes a list of suggested, but not mandatory, topics and types of articles that have been featured in past issues of *The Challenge*.

Changes: The supplementary information section of this notice is amended to include a statement that applicants are encouraged to offer suggestions about communicating information about classroom practices, assessments, and appropriate strategies.

Definition of ''Newsletter'', Specifications Regarding Length, Frequency of Publication

Comment: One commenter sought clarification of the meaning of the term ''newsletter'' in terms of length and frequency of publication envisioned for 5 *The Challenge,* expressing the concern that without more clarification proposals might be very different and difficult to compare.

Discussion: The dictionary definition for the term ''newsletter'' is ''a printed sheet, pamphlet, or small newspaper containing news or information of interest chiefly to a special group.'' While a specific definition of ''newsletter'' is not provided for this priority, the dictionary definition provides a general frame of reference. The supplementary information in the Notice of Proposed Priority states that past publication of *The Challenge* has ranged from 6—10 times per year, and the number of pages has ranged from 4—26 pages per issue. These numbers are offered as guides based on past practice, and are not requirements. The Department chose not to be prescriptive in terms of length and frequency of publication, opting instead to encourage applicants to offer their suggestions. Proposals will be reviewed individually on their own merits against the selection criteria.

Changes: None.

Selection Criteria—Adequacy of Resources

Comment: One commenter asked if peer reviewers should be determining whether costs are reasonable, and based on what qualifications.

Discussion: Peer reviewers for all grant competitions have as one of their tasks assessing budgets submitted by applicants and determining if costs are reasonable, based on the design, scope, and complexity of the proposed projects.

Changes: None.

Comment: One commenter suggested that the adequacy of resources such as adequate office space, computer hardware and software, database capabilities for the subscriber database, and established relationships with graphic designers, printers, and mailing houses are also important considerations. The commenter suggested also increasing the point value to ensure that offerors possess the necessary non-staff resources and capabilities.

Discussion: The Department agrees that it is important to consider resources such as those described by the commenter, but that consideration of those resources can be accomplished by adding a factor to the ''Adequacy of Resources'' selection criterion without increasing the overall point score for this criterion.

Change: The comment is addressed by adding the following factor under the ''Adequacy of Resources'' selection criterion: ''The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization'' for 5 points. The overall point score of 10 points for the ''Adequacy of Resources'' selection criterion remains the same. The point score for the factor ''the extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project'' is reduced from 10 to 5 points.

Organizational Experience as a Selection Factor

Comment: One commenter stated that organizational experience/qualifications is nowhere to be found within the proposed selection criteria, and commented that organizational experience and qualifications would be an important selection factor.

Discussion: The Department agrees that organizational experience and qualifications is an important selection factor. Qualifications and experience of key personnel and other factors for ensuring high-quality products and services from the proposed project are addressed under the selection criterion ''Quality of Management Plan''.

Changes: None.

Selection Criteria—Quality of Project Evaluation

Comment: One commenter questioned why so many points (25) are allocated to the ''Quality of Project Evaluation'' criterion since *The Challenge* is not a demonstration project. The commenter stated that measuring the impact on recipients of reading an article or an entire issue will be complicated and the validity of those studies can be questionable. In addition, the commenter stated that the large number of points (25% of the total possible) seems to imply an expectation of a sophisticated evaluation plan, which can be costly. Those costs would likely reduce the number or size or both, of the issues that can be produced, which would in turn reduce the likelihood of measurable impact.

Discussion: The Department places high importance on the quality of the project evaluation, which is reflected in the relatively high point score assigned to this criterion. Evaluation is also addressed in the absolute priority, which includes the statement that applicants must propose projects that: ''evaluate on an ongoing basis the impact of *The Challenge* on the intended audience, and use evaluation results for continuous improvement of the newsletter.'' The evaluation plan and methods of evaluation will vary, depending on the objectives and design of *The Challenge* proposed by each applicant. The Department intends for the award recipient to solicit customer feedback, and assess customer satisfaction regarding content, design, format, frequency of publication, length, and other relevant aspects of the newsletter, and leaves it to the applicant to develop a suitable plan to collect and use the information for quality improvement.

Changes: None

Absolute Priority

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority. Under the absolute funding priority for this competition, applicants must propose projects that:

(1) Design, develop, publish, and disseminate *The Challenge,* a newsletter for educators, prevention specialists, and other professionals in fields related to education and drug and violence prevention to provide information about effective practices to prevent drug use and violent behavior among youth.

(2) Manage all aspects of *The Challenge,* including developing contents of each issue, writing or soliciting articles for each issue, preparing artwork, handling all design and pre-production tasks, and printing and mailing.

(3) Create, maintain, and expand a subscriber data base for ED.

(4) Evaluate on an ongoing basis the impact of *The Challenge* on the intended audience, and use evaluation results for continuous improvement of the newsletter.

(5) Develop, create, and maintain a Web site to post each issue and receive reader comments and suggestions.

(6) Agree to have content of the newsletter reviewed and approved by the Department of Education prior to publication.

Selection Criteria

The following selection criteria will be used to evaluate applications for one cooperative agreement under this competition. The maximum score for all these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) *Significance.* (10 points)

In determining the significance of the proposed project, the following factor is considered: The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) *Quality of the project design.* (30 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (10)

(b) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (5)

(c) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition. (15)

(3) *Adequacy of resources.* (10 points)

In determining the adequacy of resources for the proposed project, the following factors are considered:

(a) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization. (5)

(b) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (5)

(4) *Quality of management plan.* (25 points)

In determining the quality of the management plan for the proposed project, the following factors are considered:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (5)

(b) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project, including qualifications and experience of key personnel in writing and editing newsletters for education, prevention and related fields. (10)

(c) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project. (5)

(d) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of students, faculty, parents, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate. (5)

(5) *Quality of project evaluation.* (25 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the evaluation plan provides for an ongoing evaluation of the effectiveness of *The Challenge* newsletter, and its impact on the intended audience. (10)

(b) The extent to which the evaluation results will be used for continuous improvement of *The Challenge.* (5)

(c) The extent to which the methods of evaluation are appropriate to the context within which the project operates. (5)

(d) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5)

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local government for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
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Program Authority: 20 U.S.C. 7131

Dated: March 21, 2000.

(Catalog of Federal Domestic Assistance Number 84.184P Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—*The Challenge* Newsletter)

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–7300 Filed 3–23–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No: 84.184P]

Office of Elementary and Secondary Education; Safe and Drug-Free Schools and Communities National Programs—Federal Activities Grants Program—The Challenge Newsletter

AGENCY: Department of Education.

ACTION: Notice Inviting Applications for New Awards for Fiscal Year 2000.

Purpose of the Program: To fund one cooperative agreement for the development and dissemination of *The Challenge* newsletter to provide information about effective practices to prevent drug use and violent behavior among youth.

Eligible Applicants: Public and private nonprofit organizations and individuals.

Applications available: March 24, 2000.

Deadline for Receipt of Applications: April 24, 2000.

Note: All applications must be received by the Department's Application Control Center

by 4:30 p.m. Eastern Time on or before the deadline date. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted. This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102. Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, this exception to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553 (b) (A), the Assistant Secretary for Elementary and Secondary Education has determined that proposed rulemaking is not required. Applications by mail should be sent to: U.S. Department of Education, Application Control Center, Attention: CFDA: 84.184P, Room 3633, ROB#3, 400 Maryland Avenue, SW, Washington, DC 20202–4725. The address for applications delivered by hand is: U.S. Department of Education, Application Control Center, Attention: CFDA: 84.184P, Regional Office Building 3, Room 3633, 7th and D Streets, SW, Washington, DC 20202–4725.

Deadline for Intergovernmental Review: May 23, 2000.

Available Funds: $300,000.

Estimated Size of Award: $300,000.

Estimated Number of Awards: 1.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: Up to 36 months. Please note that all applicants for multi-year awards are required to provide detailed budget information for the total project period requested. The Department will negotiate at the time of the initial award the funding levels for each year of the cooperative agreement award.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99; and (b) The Notice of Final Priority and Selection Criteria for FY 2000 published elsewhere in this issue of the **Federal Register**.

Absolute Priority: The Assistant Secretary has published elsewhere in this issue of the **Federal Register** a notice of final priority and selection criteria which establishes an absolute priority for *The Challenge* newsletter. Under 34 CFR 75.105(c)(3), the Assistant Secretary will fund under this competition only applications that meet the absolute priority.

For Applications or Information Contact: Gail Beaumont, Safe and Drug-Free Schools Program, 400 Maryland Avenue, SW, Washington, DC 20202–6123. Telephone: (202) 260–3954. By FAX: (202) 260–7767. Internet: gail__beaumont@ed.gov.

An individual who uses a TDD may call the Federal Information Relay Service FIRS) at 1–800–877–8339.

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Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7131.

Dated: March 21, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–7301 Filed 3–23–00; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Friday,

March 24, 2000

Part VII

Environmental Protection Agency

40 CFR Part 755

Methyl Tertiary Butyl Ether (MTBE); Advance Notice of Intent To Initiate Rulemaking Under the Toxic Substances Control Act To Eliminate or Limit the Use of MTBE as a Fuel Additive in Gasoline; Advance Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 755

[OPPT–62164; FRL–6496–1]

Methyl Tertiary Butyl Ether (MTBE); Advance Notice of Intent to Initiate Rulemaking Under the Toxic Substances Control Act to Eliminate or Limit the Use of MTBE as a Fuel Additive in Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: Methyl Tertiary Butyl Ether (MTBE) is a chemical compound that is used as a fuel additive in gasoline. Refiners have primarily added MTBE to gasoline to meet the Clean Air Act (CAA) requirement that areas with severe problems in attaining the National Ambient Air Quality Standard (NAAQS) for ozone use Reformulated Gasoline (RFG) containing 2% oxygen by weight. Many States have also voluntarily chosen to use RFG as a means of addressing marginal, moderate, or serious ozone nonattainment, and some refiners use MTBE to boost the octane of gasoline. In addition to the RFG program, the CAA also required the establishment of a Wintertime Oxygenated Fuel (Wintertime Oxyfuel) program. Under this program, gasoline must contain 2.7% oxygen by weight during the wintertime in areas that are not in attainment for the NAAQS for carbon monoxide (CO). In some cases this requirement is met through the use of MTBE. While the use of MTBE as a fuel additive in gasoline has helped to reduce harmful air emissions, it has also caused widespread and serious contamination of the nation's drinking water supplies. Unlike other components of gasoline, MTBE dissolves and spreads readily in the groundwater underlying a spill site, resists biodegradation, and is difficult and costly to remove from groundwater. Low levels of MTBE can render drinking water supplies unpotable due to its offensive taste and odor. At higher levels, it may also pose a risk to human health. The United States Geological Survey (USGS) has found that the occurrence of MTBE in groundwater is strongly related to its use as a fuel additive in the area, finding detections of MTBE in 21% of ambient groundwater tested in areas where MTBE is used in RFG compared with 2% of ambient groundwater in areas using conventional gasoline. EPA is today providing an advance notice of its intent to initiate a rulemaking pursuant to section 6 of the Toxic Substances Control Act (TSCA) to eliminate or limit the use of MTBE as a fuel additive. EPA seeks public comment on a number of aspects of this anticipated regulatory action, including whether the Agency should take action to address any fuel additives other than MTBE.

DATES: Comments, identified by docket control number OPPTS–62164, must be received on or before May 8, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–62164 on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Karen Smith, Office of Transportation and Air Quality, Fuels and Energy Division (6406J), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–9674; e-mail address: smith.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

Entities potentially regulated by a limit or ban on the use of MTBE as a fuel additive in gasoline are those entities that refine, import, or blend gasoline with additives, or that transport, store, or sell gasoline, or otherwise introduce gasoline into commerce. Potentially regulated categories include:

Categories	NAICS codes	SIC codes	Examples of regulated entities
Industry	324110	2911	Petroleum refiners, blenders, and importers
Industry	422710	5171	Gasoline marketers and distributors
	422720	5172	

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by an action resulting from this ANPRM. Other types of entities not listed in this table could also be directly affected, particularly if future action includes limits directed at gasoline release prevention or water remediation, rather than the MTBE content of gasoline. The North American Industrial Classification System (NAICS) and Standard Industrial Classification (SIC) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine this ANPRM. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–62164. The official record consists of the documents specifically referenced in this ANPRM, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential

Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents and in this ANPRM. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall, Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099. For additional information related to this ANPRM, see the Office of Air and Radiation (OAR) Docket, A–99–01, The Blue Ribbon Panel to Review the Use of Oxygenates in Gasoline. The index for OAR docket A–99–01 can be found at http://www.epa.gov/oms/consumer/fuels/oxypanel/blueribb.htm.

3. *Fax-on-Demand*. Using a faxphone call (202) 401–0527 and select item 4005 for an index of items in this category.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–62164 on the first page of your response. Commenters should be aware that their comments may be placed on an Internet docket web site. This information may include the commenters name and address.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093. If your comments are received after 3 p.m., they will be dated as received the next business day.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–62164. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

EPA invites you to provide your views on any issue relevant to this ANPRM. EPA has identified particular subjects in Unit VI. regarding which comment would be particularly appreciated. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to address the concerns identified by EPA.

7. Make sure to submit your comments by the deadline in this ANPRM.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Introduction

This ANPRM initiates an Agency rulemaking to address the threat to the nation's drinking water resources from contamination by MTBE, a widely used additive in gasoline. This rulemaking will be conducted under TSCA section 6, 15 U.S.C. 2605. It is EPA's intent to conduct this rulemaking as quickly as reasonably practicable. EPA's review of existing information on contamination of drinking water resources by MTBE indicates substantial evidence of a significant risk to the nation's drinking water supply. A comprehensive approach to such risk must include consideration of either reducing or eliminating the use of MTBE as a gasoline additive. As a result, EPA is initiating this process pursuant to the unreasonable risk provision under TSCA section 6 to eliminate or greatly reduce the use of MTBE as a gasoline additive. EPA is interested in comments on both the risk and these possible responses to it.

MTBE is a common and widely used additive in gasoline. It is an oxygenate, meaning it increases the oxygen content of the gasoline. It is also a source of octane in gasoline. It is widely used in those parts of the country where oxygenated gasoline is required, either by Federal or State law. For example, the 1990 amendments to the CAA require that Federal RFG meet a 2.0% oxygen content requirement by weight. MTBE is the primary oxygenate used by refiners to meet this requirement, which applies to over 30% of the country's gasoline. When MTBE is used to meet this requirement, the gasoline is blended so it contains about 11% MTBE by volume. In other parts of the country, MTBE is sometimes used in conventional or non-RFG as a source of octane. Significantly more MTBE is used in RFG and other oxygenated gasoline programs than is used in conventional gasoline.

Current data on MTBE levels in ground and surface waters indicate widespread and numerous detections at low levels of MTBE, with a more limited number of detections at higher levels. Given MTBE's widespread use as a gasoline additive and the large volumes of gasoline that are stored, transported, and used in all areas of the country, releases of MTBE to the nation's ground and surface waters occur in a number of ways. Leakage from the gasoline storage and distribution system is a major source of contamination, but the

contamination can also come from spills, emissions from marine engines into lakes and reservoirs, and to some extent from air deposition. MTBE is highly soluble in water, resists biodegradation, and moves rapidly with groundwater. It may end up in drinking water supplies even when there are no indications of other gasoline components. MTBE is detected in water much more often and at higher concentrations in areas of the country where Federal RFG is sold, given its dominant use by refiners as an oxygenate to meet the statutory RFG oxygen content requirement. The USGS has found detections of MTBE in 21% of ambient groundwater tested in areas where MTBE is used in RFG as compared with 2% of ambient groundwater in areas using conventional gasoline. (Ref. 1)

The presence of MTBE in drinking water sources presents two major problems. The first concern is that MTBE contamination may render water supplies unuseable as drinking water. MTBE has an offensive taste and odor which can be detected in water even at low levels. Because of the taste and odor problem, MTBE contamination has resulted in the loss of certain drinking water sources. For example, high levels of MTBE found in groundwater wells that supply Santa Monica's drinking water led that city to close its wells, forcing it to purchase drinking water from another public water supplier. In addition, MTBE detections found in groundwater wells that supply South Lake Tahoe forced the South Tahoe Public Utility District to close 8 of its 34 wells despite detections below EPA's advisory levels. An additional four wells were closed as a precautionary measure due to their proximity to the existing MTBE plumes.

The second major concern involves uncertainty regarding the level of risk to public health from the chronic exposure of large numbers of people to low levels of MTBE in drinking water. While inhalation of MTBE in high concentrations has been shown to cause cancer in laboratory animals, the Agency concluded in 1997 that there is little likelihood that MTBE in drinking water would cause adverse health effects at levels that cause taste and odor problems. (Ref. 2) There is still much uncertainty about the extent of the health risks associated with chronic, low-level exposures to MTBE in drinking water. The Agency is continuing to review and update its analysis of the potential health risks posed by MTBE.

Once MTBE contaminates a drinking water source, its chemical nature makes it difficult, expensive, and time-consuming to remediate. For example, it is much harder and more expensive to remove MTBE from drinking water than it is to remove other organic components of gasoline. Furthermore, MTBE does not biodegrade as readily as other components of gasoline. Given the numerous and diverse sources of potential release into the environment and the problems associated with cleaning it up once it is released, EPA believes a comprehensive approach to such risk must include consideration of either reducing or eliminating the use of MTBE as a gasoline additive.

As discussed earlier, in ground water MTBE is more soluble, does not adsorb as readily to soil particles, biodegrades less rapidly and moves more quickly than other components of gasoline. By comparison, unless frozen, MTBE in surface water will volatalize and find its way into the atmosphere. This accounts for the less frequent and generally lower concentrations of MTBE found in surface water.

Since the available information shows that there are numerous and widespread instances of groundwater contamination, EPA is considering the substitutes that would likely be used to replace MTBE. In oxygenated gasoline programs such as Federal RFG, the most likely substitute based on current usage is ethanol. Other ether compounds are currently used as oxygenates in relatively small quantities. MTBE does not occupy as dominant a position as an octane enhancer for conventional gasoline as it does as an oxygenate in RFG. Ethanol, alkylates, and aromatics are all widely-used as octane enhancers in conventional gasoline. Although EPA is seeking more information on alternatives to MTBE, EPA does not expect the use of ethanol, alkylates, or aromatics as fuel additives to present the same magnitude of risk to drinking water supplies as MTBE. Ethanol biodegrades more quickly than MTBE, and therefore seems less likely to contaminate drinking water as often as MTBE, or at the concentrations of MTBE. First order degradation constants for MTBE in ambient ground water have been reported by Schirmer and others (1998) and Borden and others (1997). The rate constants, k, from these studies are 0.0012 day(-1) (Schirmer and others, 1998) and 0.0010 ± 0.0007 day(-1) (Borden and others, 1997). (Refs. 3,4) These reaction rates for MTBE correspond to a half-life of about 1.6 and 1.9 years, respectively. By comparison, in a December 1999 report to the California Environmental Policy Council the authors report that under aerobic conditions, the reported half-lives of ethanol in surface waters are short. Half-lives span 6.5 to 26 hours for ethanol. Anaerobic biodegradation in oxygen-limited environments is also expected to proceed at rapid rates. Reported half-lives for ethanol biodegradation under anaerobic conditions range from 1 to 4.3 days. (Ref. 5) Unlike MTBE, alkylates and aromatics are expected to behave in soil and water more like other components typically found in gasoline; as a result, they too would be unlikely to contaminate drinking water as often as MTBE or at the concentrations of MTBE. Ethers other than MTBE, and alcohols other than ethanol, are not currently used widely as oxygenates; the Agency does not have much data to characterize the risks they might pose to drinking water supplies. However, the other ethers are chemically similar or related to MTBE, and they may well move through soil and water in ways and amounts similar to MTBE. EPA will closely evaluate whether compounds not currently used in significant quantities as oxygenates in RFG might be widely used as alternatives to MTBE, if MTBE use in gasoline is banned or limited, whether additional information on these compounds is necessary, and whether other measures are appropriate to assure that an elimination or limitation of MTBE in gasoline does not result in the use of alternatives that might cause a similar or greater level of risk.

The remainder of this ANPRM outlines the major elements of the problem and its potential solution. EPA invites comment from all interested parties on these and any other matters relevant to addressing the risk of MTBE to the nation's drinking water resources.

III. Background

A. What is MTBE and Why is it Used as a Fuel Additive?

MTBE is an ether compound made by combining methanol and isobutylene. The methanol is typically derived from natural gas; isobutylene can be derived as a byproduct of the petroleum refinery process. Since the 1970's, MTBE has been used in the United States as an octane-enhancing replacement for lead, primarily in mid- and high-grade gasoline at concentrations as high as 7% (by volume). Now, however, MTBE is mainly used as a fuel oxygenate at higher concentrations (11% to 15% by volume) as part of the Federal RFG and Wintertime Oxyfuel programs. These programs were initiated by EPA in 1995 and 1992, respectively.

The CAA mandates that RFG be sold in the 10 largest metropolitan areas with

the most severe summertime ozone levels, including Baltimore, Chicago, Hartford, Houston, Los Angeles, Milwaukee, New York, Philadelphia, Sacramento, and San Diego. The CAA also allows any other area classified as a marginal, moderate, or serious ozone nonattainment area to opt into the RFG program. Currently, 17 States and the District of Columbia voluntarily participate in the RFG program. These areas are located in California, Connecticut, Delaware, District of Columbia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Texas, Virginia, and Wisconsin. The total number of areas participating in the RFG program may change from year to year, depending on potential opt-ins.

EPA regulations adopted pursuant to the CAA require that RFG achieve reductions in mass emissions of volatile organic compounds (VOCs) and toxic air emissions of at least 15% during Phase I of the RFG program (1995 through 1999), and reductions in such emissions of 27% and 22%, respectively, during Phase II of the RFG program (2000 and on). Phase II RFG also requires a 6.8% reduction in oxides of nitrogen (NO_X). RFG must also meet certain mandatory content standards, including limitations on benzene and a restriction of heavy metal content. To address its unique air pollution challenges, California has adopted similar, but more stringent requirements for California RFG.

The CAA specifies that RFG must contain 2% oxygen by weight. Although a number of oxygenates could be used to meet this requirement, in practice over 87% of RFG contains MTBE as the primary oxygenate; approximately 12% of RFG contains ethanol. Two percent oxygen by weight is equivalent to approximately 11% MTBE by volume. When ethanol is used as an oxygenate, it is usually blended at 10% by volume, which is equivalent to 3.5% oxygen by weight. A small percentage of refiners use tertiary amyl methyl ether (TAME) as the primary oxygenate in RFG; more frequently TAME is present in RFG as a secondary oxygenate together with MTBE. Other oxygenates are available to refiners, such as ethyl tertiary butyl ether (ETBE), tertiary butyl alcohol (TBA), and diisopropyl ether (DIPE), but are not being used in significant quantities (or at all) at this time.

Reformulated gasoline represents over 30% of the total retail gasoline sold in the United States. According to the Department of Energy (DOE), over 126 billion gallons of gasoline were supplied for U.S. markets in 1998, with 41.5 billion gallons of that volume being reformulated gasoline. (Ref. 6) In addition to the RFG program, certain areas in California and elsewhere in the nation that have not attained the NAAQS for CO are required under the CAA to implement the Wintertime Oxyfuel program. The CAA requires Wintertime Oxyfuel to contain no less than 2.7% oxygen (by weight) during the winter, when CO levels are highest. There are 17 areas across the country that currently implement the Wintertime Oxyfuel program. Ethanol is the primary oxygenate used to meet this oxygen requirement. Currently, Los Angeles is the only area implementing the Wintertime Oxyfuel program with MTBE. When MTBE is used to meet the Wintertime Oxyfuel requirements, it is added to gasoline at a concentration of approximately 15% by volume.

MTBE is also used in conventional gasoline to boost the octane of gasoline. Octane is a measure of a fuel's resistance to uncontrolled combustion (engine knock). The DOE estimates that approximately 12,000 barrels of MTBE are used per day as an octane enhancer in conventional gasoline. (Ref. 7) This is less than 5% of the total MTBE use in gasoline. MTBE is typically present in gasoline as an octane enhancer at 3–7% by volume. Alternative octane enhancers are also used, including ethanol, alkylates, and aromatic compounds.

A number of States have taken actions designed to limit the use of MTBE in gasoline. In March 1999, Governor Gray Davis of California issued an executive order requiring the California Air Resources Board to develop a timetable for the removal of MTBE from gasoline sold in California as soon as possible, but by no later than December 31, 2002. Maine opted out of the RFG program in March 1999. In July of 1999, New Hampshire enacted a law directed at reducing the use of MTBE in gasoline, including a requirement that the State request a waiver from EPA of RFG oxygen content requirements until 2002. Five other States have initiated proposed limited use, bans or phase-outs of MTBE, including Arizona, Kansas, Missouri, New York, and South Dakota.

B. What Risks Does MTBE Pose to Drinking Water Supplies?

1. *Chemical properties.* In comparison to other components of concern in gasoline, including benzene, toluene, ethylbenzene, and xylenes (collectively referred to as ''BTEX''), the available information shows MTBE may pose additional problems when it escapes into the environment through gasoline releases. MTBE is capable of traveling through soil rapidly, is very soluble in water (much more so than BTEX), and is highly resistant to biodegradation (much more so than BTEX). MTBE that enters groundwater moves at nearly the same velocity as the groundwater itself. As a result, it often travels farther than other gasoline constituents, making it more likely to impact public and private drinking water wells. Due to its affinity for water and its tendency to form large contamination plumes in groundwater, and because MTBE is highly resistant to biodegradation and remediation, gasoline releases with MTBE can be substantially more difficult and costly to remediate than gasoline releases that do not contain MTBE (Unit III.E.). This is a substantial concern in the United States, where approximately 40–46% of the population uses groundwater as a source of drinking water.

2. *Taste and odor.* MTBE has a very unpleasant turpentine-like taste and odor that at low levels of contamination can render drinking water unacceptable for consumption. A number of studies have been conducted on the concentrations of MTBE in drinking water at which individuals can detect the taste and odor of the chemical. (Refs. 8,9,10) Human sensitivity to taste and odor varies widely. In controlled studies, some individuals were able to detect very low concentrations of MTBE, while others do not taste or smell the chemical even at much higher concentrations. In controlled studies individuals have detected odor and taste at concentrations of MTBE as low as 2.5 parts per billion (ppb) for odor and 2 ppb for taste.[1]

In December 1997, EPA's Office of Water released a non-regulatory advisory for MTBE in drinking water. The EPA advisory is not a mandatory standard for action and is not Federally enforceable, but provides guidance for communities that may be exposed to drinking water contaminated with MTBE. According to the advisory, keeping MTBE concentrations in the range of 20–40 µg/L or below would likely avert unpleasant taste and odor effects, recognizing that some people may detect the chemical below this concentration range.

The State of California has chosen to establish a secondary drinking water standard of 5 µg/L to ensure the potability of drinking water for more

[1] Throughout this ANPRM, various studies are cited which may refer to the presence of MTBE in water in either micrograms per liter (µg/L) or ppb. These units are approximately interchangeable assuming the density of the water is constant. In reality, to the extent that the water density may vary from study to study, equivalence of these units may not be exact.

sensitive individuals. EPA is planning to upgrade its MTBE advisory to a national secondary drinking water standard and will review its 1997 advisory levels at that time. Secondary drinking water standards address the aesthetic qualities that relate to public acceptance of drinking water and are provided as non-enforceable guidance to the States.

3. *Human health effects.* The majority of the human health-related research conducted to date on MTBE has focused on adverse effects that may result through inhalation of the chemical. At high doses by the inhalation route, MTBE has caused non-cancer health effects as well as tumors in two strains of rat and one strain of mouse in a variety of organs. However, there have been no human or animal health effects studies concerning the ingestion of MTBE in drinking water. In one study, animals were given a daily (all at once) dose of MTBE in olive oil. There were carcinogenic effects at a high level of exposure. Because the animals were not exposed through drinking water, uncertainties remain concerning the degree of risk associated with typical human exposure.

EPA classified MTBE as a ''possible'' human carcinogen under its 1986 cancer risk assessment guidelines on the basis of results of inhalation cancer tests and has suggested that it be regarded as posing a potential carcinogenic hazard and risk to humans, although no quantitative estimate of the cancer potency of MTBE has been established by EPA because of limitations in the available data. (Refs. 11,12) While MTBE has been characterized as an animal carcinogen, both the International Agency for Research on Cancer and the Department of Health and Human Services have indicated that there are not enough data to classify MTBE with regard to human carcinogenicity under their classification schemes. (Refs. 13,14) It should be noted that conclusions in the Office of Science and Technology Policy's 1997 Interagency Assessment of Oxygenated Fuels and in a 1996 report by the Health Effects Institute generally support EPA's view on potential carcinogenic hazard. (Ref. 15) The Interagency Assessment stated, in regard to inhalation risks, that ''it is not known whether the cancer risk of oxygenated gasoline containing MTBE is significantly different from the cancer risk of conventional gasoline.'' The estimated upper bound cancer units risks of MTBE are similar to or slightly lower than those of fully vaporized conventional gasoline, which has been listed by EPA as a probable human carcinogen based on animal carcinogenicity data. However, because of lack of health data on the nonoxygenated gasoline vapors to which humans are actually exposed, it is not possible to have a reasonably good estimate of population cancer risk to conventional gasoline.

As a result of substantial scientific uncertainties, a review committee of the National Academy of Sciences (NAS) recommended that additional studies be conducted on MTBE and that questions about the bolus dosing study be resolved before the study is used for risk assessment purposes. (Ref. 16) A number of ongoing studies by EPA, the Chemical Industry Institute of Toxicology (CIIT) and other organizations should provide EPA with information to assess health risks via different routes of MTBE exposure. These studies should allow for extrapolation from the inhalation studies to an assessment of risks associated with ingestion of drinking water. In addition, further study of potential health effects of MTBE and other fuel additives are underway by the petroleum industry as required under CAA section 211.

EPA reviewed available health effects information on MTBE in its 1997 drinking water advisory guidance and determined that there was insufficient information available on MTBE health effects and exposure to allow EPA to establish a national primary drinking water regulation. The drinking water advisory document indicated there is little likelihood that MTBE concentrations between 20 and 40 µg/L would cause adverse health effects. Nevertheless, California and New Hampshire have proposed health-based primary drinking water standards of 13 µg/L for MTBE.

C. How Widespread is the MTBE Contamination?

Each year approximately 9 million gallons of gasoline (the equivalent of a full supertanker) are released to the environment in the United States from leaks and spills, according to an estimate by the Alliance for Proper Gasoline Handling. (Ref. 17) MTBE may be present in a substantial portion of these releases. Because of MTBE's solubility in water and resistance to degradation, it is being detected with increasing frequency in both groundwater and surface water. The potential for harm posed by MTBE releases can perhaps best be understood by reviewing some well-documented case studies. The releases of MTBE that occurred in these situations could have occurred, and could be repeated, virtually anywhere in the United States. Larger-scale studies document the widespread detection of MTBE in the nation's water supplies.

1. *Examples of MTBE contamination.* The City of Santa Monica, California, has historically relied on seven wells from the Arcadia and Charnock well fields to provide approximately 50% of the drinking water to the town's 87,000 residents. In August of 1995, the City found MTBE in water derived from the Charnock Wellfield. By April of 1996, MTBE levels had risen dramatically in all wells, with concentrations reaching up to 610 ppb. All five of the city's Charnock wells were shut down in 1996. The Southern California Water Company (SCWC), which had withdrawn drinking water from the Charnock well field, also closed its two production wells to avoid drawing contamination into the wells. The SCWC Charnock wells had provided a portion of the drinking water for 10,000 residences in Culver City, California. After completion of screening level investigations at 28 underground storage tanks (USTs) locations and two gasoline product pipelines, the EPA and the Los Angeles Regional Water Quality Control Board (RWQCB) identified 25 USTs as contributing contamination to the Charnock Sub-Basin, the groundwater basin which supplies water to the Charnock Wellfields. From 1997–1999, three companies potentially responsible for the contamination voluntarily conducted testing of wellhead drinking water treatment technologies, performed regional groundwater investigation activities, and reimbursed the City of Santa Monica and Southern California Water Company for water replacement costs. These companies claim to have spent over $50 million on response activities to date. Since 1996, the city and SCWC have met their municipal water demand by utilizing water purchased from the Metropolitan Water District, at a cost of over $3 million per year. Together with the Agencies' oversight cost and the costs of investigation and cleanup at all the UST locations and gasoline product pipelines, it is estimated that over $60 million in response costs have been expended in addressing the Charnock Wellfield problem to date. In September 1999, EPA and RWQCB issued orders to potentially responsible parties that require them to pay for replacement water for the affected homeowners from January 2000 until January 2005. A final cleanup is expected to cost more than $160 million.

Contamination of the Arcadia field was traced to a single gas station. The gas station was demolished,

underground tanks and lines were removed, and approximately 2,000 cubic yards of gasoline-containing soils were excavated. Cleanup crews are now working to control and remove additional sources of contamination from the area. In addition, a shallow groundwater pump and treat system was installed in October 1997 to control further migration of the contaminated groundwater. The extracted water is filtered through three carbon beds to remove the bulk of MTBE before the water is discharged into the sanitary sewer. Actions are currently underway to begin additional treatment of water from the Arcadia wells with carbon and eventually obtain a permit to serve the water as drinking water.

In Glennville, California, residential drinking wells were contaminated with MTBE at levels up to 20,000 ppb. The likely source of the contamination was an UST and associated piping at the town's only gas station. The town was forced to start using an alternative drinking water source in 1997, and still relies on alternative sources of water.

In Whitefield, Maine, an automobile gasoline leak of 20 gallons or less contaminated a bedrock drinking water well for an elementary school with MTBE to a level of 900 µg/L. According to a report by the the Northeast States for Coordinated Air Use Management (NESCAUM), the State of Maine traced the source of the spill to an area about 120 feet from the well where cars were parked on the grass. (Ref. 18)

In December 1997, a car accident in Standish, Maine, led to the release of 8 to 10 gallons of gasoline that contaminated 24 nearby private wells. Eleven wells were contaminated with MTBE to a level above 35 µg/L; two were contaminated at over 1,000 µg/L; and the well nearest the accident site contained the highest concentration of 6,500 µg/L. When the State discovered the contaminated wells in May 1998, it removed 79 cubic yards of contaminated soil. The contamination extended to the top of the underlying bedrock at a depth of 9 feet below the surface. (Ref. 19)

In the town of Windham, Maine, two public water supply wells 900 to 1,100 feet from underground gasoline tanks were contaminated to levels of 1 to 6 µg/L MTBE. According to a NESCAUM report, the tanks were state-of-the-art technology, double walled and only 10 months old when the MTBE contamination was discovered. (Ref. 20) Extensive testing showed that the tanks did not leak directly to the ground, nor were any vapor leaks found after extensive testing. NESCAUM stated that the only plausible cause of the contamination was gasoline overfills. The amount spilled was estimated to be 10 to 40 gallons.

MTBE has also been detected in surface waters of lakes and reservoirs. A University of California, Davis, study was conducted at Donner Lake, California. (Ref. 21) The lake is a source of drinking water for lakeside residents and contributes to the drinking water supply of downstream communities, such as Reno, Nevada. MTBE levels were low during winter months, at just above the 0.1 µg/L level of detection. Levels increased dramatically during the summer boating season to a high of 12.1 µg/L. Following Labor Day, boat use declined dramatically, as did MTBE levels. Volatilization between the air/water interface appeared to be the major avenue for loss of MTBE.

In Shasta Lake, a large recreational-use reservoir in northern California, MTBE concentrations were reported to range from 9–88 µg/L over the Labor Day 1996 weekend. Maximum values were associated with large boats entering a docking area or with engine exhaust from those boats. MTBE was also measured in a temporary lake constructed in southern California for a jetski event in the summer of 1996. After the 3-day event, concentrations reportedly ranged from 50–60 µg/L.

On January 28, 2000, a tanker truck rolled over on Route 110 in Lowell, Massachusetts, releasing approximately 11,000 gallons of gasoline. Most of the gasoline entered the Merrimack River. The cities of Tewksbury, Methuen, and Lawrence each have drinking water intakes on the River downstream of the spill site. Although contaminants were not detected at the drinking water treatment plants the night of the spill, later samples indicated elevated levels of MTBE. The cities of Tewksbury and Lawrence temporarily closed their drinking water treatment facilities and purchased water from alternative sources; the treatment facility in Methuen remained open. MTBE levels dropped significantly after a few days, and the facilities were advised that they could safely use their intakes.

2. *Large-scale studies.* Although scattered incidents of localized water contamination by MTBE have been reported since the early 1980s, the first report to suggest that MTBE contamination of water might be occurring on a widespread basis came as a result of the sampling of ambient groundwater conducted by the USGS National Water Quality Assessment Program (NAWQA). Ambient groundwater is groundwater where there are no known point sources of contamination prior to sampling in drinking water and non-drinking water wells. In an initial report of sampling conducted in shallow groundwater in 1993 and 1994, USGS reported that of 210 sampled wells and springs in 8 urban areas, 56 (27%) contained MTBE at a minimum reporting level of 0.2 µg/L, and 3% of the wells and springs had MTBE concentrations exceeding 20 µg/L. (Ref. 22) The maximum concentration of MTBE detected in these urban areas was over 100 µg/L.

The USGS collected data in 1995 from additional wells in urban areas and combined them with data from 1993–1994 to provide specific information on drinking water aquifers. This analysis showed MTBE detections in 12 (14%) of 83 shallow urban wells located in aquifers supplying drinking water and in 19 (2%) of 949 rural wells in aquifers used for drinking water, with a median concentration of approximately 0.50 µg/L. (Ref. 23)

Finally, in a 1999 publication in the Proceedings of the 1999 Water Resources Conference of the American Water Works Association, USGS assembled its early ambient groundwater data with additional data from urban and rural wells. (Ref. 24) For urban areas, the frequency of detection of MTBE in groundwater in areas of substantial MTBE use was about 27% (49 of 184 wells), whereas frequency of detection in non-substantial use areas was about 5%. In rural areas, the frequency of detection of MTBE in areas of substantial MTBE use was about 17% (50 of 298 wells), whereas the frequency of detection in non-substantial use areas was about 2%. Overall, USGS found detections of MTBE in 21% of ambient groundwater tested in areas where MTBE is used in RFG compared with 2% of ambient groundwater in areas using conventional gasoline. In contrast, BTEX was found in only 4% of areas where RFG or winter oxyfuels were used. (Ref. 25)

Preliminary results from a joint USGS/EPA study of 12 northeastern States (with a detection limit of 1.0 µg/L) show that MTBE was detected in 7% of drinking water supplies, with 0.8% of these detections above 20 µg/L. (Ref. 26) The study also concluded that MTBE is detected five times more frequently in drinking water from community water systems in RFG or Winter Oxyfuel areas than in non-RFG or non-Winter Oxyfuel areas. The study showed BTEX detections in 8.3% of the systems analyzed (2,097 systems). Although collectively BTEX was found at approximately the same frequency as MTBE, there is very little co-occurrence of the BTEX compounds with MTBE (less than 1% of the systems). This may indicate that MTBE separated from the

rest of the contaminants in the original gasoline plumes, but it also indicates that the increased use of MTBE since 1995 may have created a new universe of contaminated water supplies.

In 1998, the State of Maine reported on sampling conducted on 951 household drinking water wells and 793 public water supplies. (Ref. 27) The study was designed to be statistically representative of the entire State. MTBE was detected in 150 (15.8%) of the sampled household wells at a minimum reporting level of 0.1 µg/L, and 1.1% of the wells contained MTBE levels exceeding 35 µg/L. The Maine report projected that approximately 1,400–5,200 private wells across the State could be contaminated at levels exceeding 35 µg/L. For public water systems sampled, 125 (16%) showed detectable levels of MTBE, 48 (6.1%) between 1 µg/L and 35 µg/L, and no samples above 35 µg/L.

In another study reported in 1998, the American Water Works Service Company collected data from drinking water wells in 16 States. (Ref. 28) Forty-four (2%) of 2,120 samples from 17 (4%) of 450 wells tested positive for MTBE at a minimum reporting level of 0.2 µg/L, with the highest concentration at 8 µg/L.

In a 1998 industry study of 700 service stations known to have released gasoline, MTBE was detected at 83% of the sites, with about 43% of the sites having MTBE concentrations greater than 1,000 µg/L. (Ref. 29) A large percentage (76%) of station sites sampled in Florida showed MTBE contamination, even though Florida does not participate in the RFG or winter oxyfuel programs. It is assumed that MTBE was used as an octane enhancer in gasoline released from Florida service stations.

An EPA-supported survey of the 50 States and District of Columbia in 1998 found that, of the 34 States that acquire MTBE data from leaking underground storage tank (LUST) sites, 27 (79%) indicated that MTBE was present at more than 20% of their sites, and 10 (29%) reported MTBE at more than 80% of their sites. (Ref. 30) The survey also asked about contamination of drinking water wells. Of the 40 State programs that responded, 25 (51%) had received reports of private wells contaminated with MTBE. In addition, 19 (39%) of the programs reported public drinking water wells contaminated with MTBE. Five of the States responding to the survey reported that MTBE was detected in groundwater at LUST sites where the product released was not gasoline. MTBE concentrations of greater than 20 µg/L in groundwater had occurred as the result of releases of diesel fuel, jet fuel, heating oil, aviation fuel, and waste oil. Apparently, MTBE cross-contaminated other petroleum products during transport and distribution. A study of fuel releases in Connecticut (Ref. 31) provides further evidence of MTBE contamination of heating oil. In this study, 27 heating oil release sites resulted in MTBE contamination of groundwater with concentrations ranging from 1 to 4,100 µg/L. At the site with the highest concentration of MTBE in groundwater, MTBE was measured in the heating oil at a concentration of 14 milligram/Liter (mg/L).

Individual case studies suggest that, depending on the hydrogeology of the site, significant MTBE contamination of water supplies could occur and is costly and time-consuming to remedy. The large-scale studies indicate that MTBE releases have occurred in many places, with documented detections in public and private drinking water sources.

D. What are the Major Sources of MTBE Contamination and How are They Currently Regulated?

As a large industrialized nation, the United States produces, distributes, and consumes extensive quantities of gasoline, and much of that gasoline contains MTBE. The DOE estimates that in 1998, over 126 billion gallons of gasoline were sold in the United States (Ref. 32) RFG represented 41.5 billion gallons of that total, with the vast majority containing MTBE as the primary oxygenate. After production in the United States or import, gasoline may travel through thousands of miles of pipelines, or be transported by truck, to any of roughly 10,000 terminals and bulk stations. From there it may be distributed to one of 180,000 retail outlets and fleet storage facilities, or to any of hundreds of thousands of above-ground or underground tanks at farms, industrial facilities, businesses, and homes. Finally, gasoline is removed from bulk storage into individualized storage units associated with such products as cars, trucks, boats, planes, lawn mowers, brush cutters, and chain saws. Residual gasoline in transport conduits may contaminate different types of fuels (e.g., home heating oil) that is transported through the same conduits at different times. Although this does not normally cause problems, it may explain why MTBE has been found in releases of home heating oil and other fuels. There are opportunities for leaks wherever gasoline (or a product containing gasoline) is stored, and there are opportunities for spills whenever fuel is transported or transferred from one container to another. Although many Federal and State programs have been developed to minimize the potential for leaks and spills from the vast array of units and individuals handling gasoline, no system involving so much product and so many individual handlers can be foolproof. Gasoline is released to the environment every day; these releases can be expected to continue and MTBE, being more soluble and less biodegradable than BTEX, will move more quickly and at higher concentrations than the other components of gasoline, making its way to surface water and groundwater resources. This unit describes the major sources of gasoline leaks, and summarizes regulatory programs applicable to them.

1. *Underground storage tanks.* There are an estimated 760,000 USTs currently in use for petroleum storage in the United States that are subject to regulation under Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C . 6991a-i. These tanks have a storage capacity of approximately 6 billion gallons. In addition, there are approximately 3 to 4 million USTs storing fuel that are exempt from RCRA Subtitle I regulation including:

a. Farm and residential tanks of 1,100 gallons or less capacity holding motor fuel for noncommercial purposes.

b. Tanks storing heating oil used on the premises where it is stored.

c. Tanks on or above the floor of underground areas, such as basements or tunnels.

d. Septic tanks and systems for collecting storm water and wastewater.

e. Flow-through process tanks.

f. Tanks of 110 gallons or less capacity.

g. Emergency spill and overfill tanks.

Leaking USTs have been identified as the likely sources of a number of the more problematic releases of MTBE to the environment, including releases that have closed water supplies in Santa Monica and Glennville, California. In California alone, the minimum number of MTBE point sources from leaking UST sites is estimated at greater than 10,000.

In 1988, EPA issued regulations setting minimum standards for RCRA Subtitle I-regulated UST systems. Existing UST systems, those installed on or before December 22, 1988, had until December 22, 1998, to upgrade with spill, overfill, and corrosion protection, properly close, or meet new tank performance standards. Any UST system installed after December 22, 1988, had to meet new tank performance standards for spill, overfill,

and corrosion protection at the time of installation. Based on reports received as of the end of September 1999, EPA estimates that approximately 85% of the RCRA-regulated universe of UST systems currently meet EPA's upgrade or new tank requirements. By the end of 2000, EPA expects that approximately 90% of RCRA-regulated USTs will be in compliance, leaving approximately 70,000 substandard USTs.

The Federal regulations also require that UST systems have release detection equipment to identify releases to the environment. The regulations required that all owners and operators install and properly operate a method of release detection no later than 1993 based on the age of the UST system. While virtually all UST systems are equipped with leak detection equipment, they are not necessarily installed or operated properly. Largely as a result of problems with proper operation of leak detection equipment, EPA estimates that approximately 60% of UST systems are in compliance with the leak detection requirements. By the end of 2005, EPA expects compliance with the leak detection requirements will be 90%.

EPA provides funding (through the Leaking Underground Storage Tank Trust Fund) to States to oversee the cleanup of releases from USTs. Since the UST program began, approximately 400,000 releases from USTs have been confirmed; of that number, approximately 230,000 cleanups have been completed. While not every State is testing for MTBE at UST release sites, those that do have found MTBE at most, if not all, release sites. In response to a recommendation by the Blue Ribbon Panel (the Panel), EPA recently sent a memo to all State UST programs recommending that they monitor for and report MTBE in groundwater at all leaking UST sites.

Those facilities that have a total underground oil storage capacity of more than 42,000 gallons, and which are located such that they could reasonably be expected to discharge oil into navigable waters or adjoining shorelines, are subject to EPA requirements for the development of Spill Prevention, Control and Countermeasure (SPCC) Plans pursuant to Clean Water Act (CWA) section 311(j)(1)(C). An SPCC plan is a detailed, facility-specific description of how the facility will comply with EPA regulatory requirements for secondary containment, facility drainage, dikes or barriers, sump and collection systems, retention ponds, curbing, tank corrosion protection systems, and liquid level devices (40 CFR 112.1–112.7). To avoid duplicative regulation under the RCRA and CWA section 311 programs, EPA proposed in 1991 to exempt from SPCC requirements those completely buried tanks that are subject to RCRA Subtitle I requirements. EPA expects to issue a final rule dealing with this and other modifications to the SPCC program later in 2000.

It is important to understand that even after USTs are in full compliance with the RCRA and CWA section 311 requirements, some releases are expected to occur as a result of improper installation or upgrading, improper operation and maintenance, and accidents.

2. *Above-ground storage tanks.* EPA regulates under the CWA section 311 SPCC program approximately 440,000 facilities with above-ground storage tanks (ASTs) that are located so as to be reasonably expected to discharge oil to surface waters or adjoining shorelines. A facility is regulated if it has an AST with a capacity of more than 660 gallons, or multiple ASTs with a combined capacity of more than 1,320 gallons. ASTs are also subject to EPA's more general requirements for the reporting of oil spills to navigable waters, 40 CFR part 110, and EPA's prohibition on the discharge to navigable waters of oil in quantities that will:

a. Violate applicable water quality standards.

b. Cause a sheen on the waters.

c. Cause a sludge or emulsion to be deposited beneath the surface of the water or adjoining shoreline (40 CFR 110.3).

Despite EPA's regulatory programs, almost 20,000 oil spills to navigable water (from all sources, including tank trucks, barges, etc.) are reported each year. About half, or 10,000 spills, occur annually to the inland zone over which EPA has jurisdiction, while the other half occurs in the coastal zone over which the Coast Guard exercises jurisdiction.

3. *Pipelines.* Excluding intrastate pipelines and small gathering lines associated with crude oil production fields, there are approximately 160,000 miles of liquids pipelines in the United States. These pipelines transport approximately 525 billion gallons of crude oil and refined products annually. The Department of Transportation (DOT) estimates that, over a recent 5-year period (1994–1998), an average of 29 gasoline spills occurred annually from pipelines, with the total volume of gasoline released from pipelines averaging 1.03 million gallons per year. While there are little or no data on the extent of MTBE releases from pipelines, MTBE is expected to be present in some portion of the refined product in the pipelines.

In California, pipeline release data are currently being compiled by the Office of the State Fire Marshal, which regulates approximately 8,500 miles of pipelines. Since 1981, there have been approximately 300 pipeline releases within the State Fire Marshal's Jurisdiction. (Ref. 33)

Pipelines are regulated by the DOT, Research and Special Programs Administration (RSPA). Under authority of the Pipeline Safety Act of 1992, 49 U.S.C. 60101 *et seq.*, DOT has established minimum safety standards for pipelines carrying hazardous liquids, including petroleum and petroleum products (49 CFR part 195). Under authority of CWA section 311, DOT also requires response planning for pipelines that, because of their location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable water, adjoining shorelines, or the exclusive economic zones (49 CFR part 194).

4. *Other releases.* Releases from automobile accidents, tank truck spills, consumer disposal of ''old'' gasoline, and spills during fueling operations have been identified as sources of contamination of drinking water wells. The incidents in Maine, described in Unit III.C.1. are examples of how relatively small spills can result in contamination of nearby drinking water supplies. Home heating oil storage tanks have also been identified as potential sources of MTBE contamination, as MTBE might be present from mixing the heating oil with small volumes of gasoline in the bulk fuel distribution or tank truck delivery systems. Other data on releases of this type are not available, and EPA is not aware of any efforts currently underway to further characterize these sources of MTBE contamination.

EPA regulatory programs do not address small episodic releases of gasoline unless they result in a discharge to surface waters. For those releases, the spill must be reported, and the responsible party may be penalized for any violation of EPA's oil discharge prohibition. In the many cases involving accidental spills, however, these requirements are not effective in preventing releases.

5. *Watercraft.* Gasoline-powered watercraft have contributed to the contamination of lakes and reservoirs with MTBE. The two-stroke engines commonly used for certain watercraft can discharge up to 30% of each gallon of gasoline as unburned hydrocarbons. (EPA issued a final rule to reduce the

amount of air emissions from new gasoline-powered watercraft and outboard motors which will be phased-in beginning in 1998, and completed in the 2006 model year. This rule is also expected to reduce the release of unburned hydrocarbons from new engines into surface waters. This rulemaking published in the **Federal Register** of October 4, 1996 (61 FR 52088) (FRL–5548–8), which applies only to new engines, will reduce hydrocarbon emissions by 75%. The State of California requires that EPA's new standards be fully implemented by 2001). As described in Unit III.C.1., concentrations of MTBE in lakes with significant recreational boating tend to peak in the boating season at levels that can be a concern for taste and odor, and possibly human health, and decrease fairly rapidly after the boating season has ended. Volatilization at the air/water surface is considered the dominant mechanism for this removal process.

Although most discharges of pollutants from point sources (e.g., pipes and other discrete conveyances) to surface waters must be authorized under CWA section 402 by a National Pollutant Discharge Elimination System (NPDES) permit, discharges from properly functioning marine engines are currently subject to a regulatory exemption from this requirement (40 CFR 122.3 (a)).

6.*Storm water runoff.* Storm water runoff becomes contaminated with MTBE from the dissolution of residual MTBE from parking lots and roadways, as well as from atmospheric washout during precipitation events. The USGS has characterized MTBE concentrations in runoff in many areas and has found such contamination typically to be lower than 2 ppb. (Ref. 34) The National Science and Technology Council's 1997 Interagency Assessment of Oxygenated Fuels Report describes storm water runoff as exhibiting concentrations of 0.2–8.7 ppb in 7% of the samples tested in 16 cities from 1991 to 1995. (Ref. 35) Most detections in this study were in the Denver area, where implementation of the Wintertime Oxyfuel program began in 1988. Based on predictive modeling, concentrations in rainwater (in μg/L) are expected to be equivalent to the surrounding air concentrations (in ppb, volume). MTBE air concentrations tend to be less than 1 ppb in urban areas, leading to predicted rainwater levels of 1 μg/L or less. However, rainwater around localized areas of high MTBE air concentrations (e.g., parking garages) could contain correspondingly higher levels of MTBE. Storm water may be discharged to surface water or percolate to groundwater, and thus serves as a continuing source of low-level MTBE contamination of these potential drinking water sources.

Clean Water Act NPDES permit requirements apply to certain discharges of storm water which may contain MTBE. Though many discharges of storm water are not subject to permit requirements, NPDES permits are required for industrial storm water discharges, discharges from municipal separate storm sewer systems, and storm water discharges specifically designated by EPA or authorized NPDES States. Although MTBE is not typically targeted in these permits, the best management practices and planning requirements usually specified are likely to reduce MTBE discharges through storm water.

As this summary demonstrates, there are a number of programs in place to minimize or mitigate the effects of gasoline releases. However, in light of the volume of gasoline used and the myriad opportunities for leaks, spills, and accidents, substantial releases of gasoline are likely to continue to occur in the future.

E. How Practical is it to Cleanup Drinking Water Supplies to Remove MTBE?

Because spills of conventional gasoline typically move slowly through groundwater, and are biodegraded over time, many are left in place to undergo bioremediation at no cost other than temporarily replacing the water supply. However, MTBE moves rapidly with groundwater, is not readily degraded in the groundwater environment, and can render groundwater unpotable at low levels. Therefore, spills involving MTBE require much more aggressive management and remediation than do spills of conventional gasoline.

MTBE's chemical properties also make it difficult or costly to remediate using conventional ''active'' processes. Two common treatment techniques are air stripping and use of granular activated carbon (GAC). In air stripping, contaminated groundwater is passed through an aeration tower that effectively removes the chemicals from the water and releases it into the air. Where necessary, the chemical is then removed from the air into a solid medium that can be disposed of. MTBE does not readily partition from water to the vapor phase. Air stripping of MTBE is most effective when higher air to water ratios, or higher temperatures are used than would be required for other more volatile compounds. In a GAC system, water is passed through one or more beds of carbon; contaminants in the water are sorbed onto the carbon, which can either be disposed of or ''refreshed'' by driving out the contaminants (usually by heating). However, the relatively low sorption of MTBE to solid particles means that the GAC must be used in greater quantities, driving up treatment costs. As a practical matter, therefore, MTBE-contaminated groundwater is difficult and costly to remediate.

F. What Action did EPA's Blue Ribbon Panel Recommend?

In November 1998, EPA established a the Panel to investigate air quality benefits and water quality concerns associated with the use of oxygenates, including MTBE, in gasoline. The Panel was established under EPA's Clean Air Act Advisory Committee, a policy committee established to advise EPA on issues related to implementing the CAA Amendments of 1990.

The Panel members consisted of leading experts from the public health, environmental and scientific communities, automotive and fuels industry, water utilities, and local and State governments. The Panel met six times from January to June 1999, with the charge to:

1. Examine the role of oxygenates in meeting the nation's goal of clean air.
2. Evaluate each product's efficiency in providing clean air benefits and the existence of alternatives.
3. Assess the behavior of oxygenates in the environment.
4. Review any known health effects.
5. Compare the cost of production and use and each product's availability—both at present and in the future.

Further, the Panel studied the causes of groundwater and drinking water contamination from motor vehicle fuels, and explored prevention and cleanup technologies for water and soil. In September 1999, the Panel released its report, entitled *Achieving Clean Air and Clean Water, The Report of the Blue Ribbon Panel on Oxygenates in Gasoline.* The Report is available in the docket to this ANPRM, and is also available on http://www.epa.gov/oms/consumer/fuels/oxypanel.blueribb.htm.

The Panel recommended a package of reforms to ensure that water supplies are better protected while the substantial reductions in air pollution that have resulted from RFG are maintained. The Panel enumerated 16 suggestions for Federal, State, and Congressional action, including the following:

- Recommended a comprehensive set of improvements to the nation's water protection programs, including over 20 specific actions to enhance UST, safe

drinking water, and private-well protection programs.

• Agreed broadly that use of MTBE should be reduced substantially (with some members supporting its complete phase out), and recommended action by Congress to clarify Federal and State authority to regulate and/or eliminate the use of MTBE and other gasoline additives that threaten drinking water supplies.

• Recommended that Congress act to remove the current CAA requirement that 2% of RFG, by weight, consist of oxygen, to ensure that adequate fuel supplies can be blended in a cost-effective manner while quickly reducing usage of MTBE.

• Recommended that EPA take action to ensure that there is no loss of current air quality benefits associated with the use of MTBE.

While the Panel indicated that its recommendations should be implemented as a complete package, it also stated that ''the majority of these recommendations could be implemented by Federal and State environmental agencies without further legislative action, and we would urge their rapid implementation.''

Although the Panel agreed broadly on its recommendations, two members, while in general agreement with the Panel, had concerns with specific provisions: The MTBE industry representative disagreed with the recommendation to limit the use of MTBE, and the ethanol industry representative disagreed with the recommendation that the CAA requirement that oxygenates be used in RFG be eliminated. Some Panel members believed that MTBE use should be banned altogether.

EPA agrees with the concerns raised in the report of the Panel regarding the continued use of MTBE as a fuel additive, and will consider its recommendations further as it proceeds through a TSCA section 6 rulemaking to limit or ban MTBE's use in gasoline.

IV. Section 6 of the Toxic Substances Control Act

A. What is the Scope of TSCA Section 6 Authority?

Section 6 of TSCA, 15 U.S.C. 2605, provides EPA with broad authority to issue rules to regulate the manufacture, processing, distribution in commerce, use, and/or disposal of chemical substances in the United States where such regulation is necessary to prevent unreasonable risks to health or the environment. The Agency and courts have interpreted the ''unreasonable risk'' standard to be a risk-benefit standard, allowing regulation where risks to health or the environment posed by a particular activity or activities involving a chemical outweigh the benefits associated with such activity or activities. TSCA section 6 lists a number of possible forms that such regulation may take, including:

1. Regulating the manufacturing, processing, or distribution in commerce of a chemical substance, including a complete ban of any such activity or limiting the amounts of the chemical substances that may be manufactured, processed, or distributed in commerce.

2. Regulating the manufacturing, processing, or distribution in commerce of a chemical substance for a particular use or uses, including banning any such activity for a particular use or uses of the chemical substance; limiting the concentration of the chemical substance that may be used in any such activity; or limiting the amounts of the chemical substance that may be manufactured, processed, or distributed in commerce for such particular use or uses.

3. Requiring that the chemical substance be accompanied by such warning statements and/or instructions for use with respect to its use, distribution in commerce, and/or disposal as the Administrator finds necessary.

4. Requiring manufacturers and/or processors of a chemical substance to make and retain such records of the manufacturing process as the Administrator finds necessary and/or to monitor or conduct tests which are reasonable and necessary to assure compliance with a rule under TSCA section 6.

5. Prohibiting or regulating any manner or method of commercial use of a chemical substance.

6. Prohibiting or regulating the disposal of a chemical substance.

7. Requiring manufacturers or processors of a chemical substance to provide warnings to distributors or users of the substance and to replace or repurchase such substance.

TSCA section 6(a) directs the Agency to apply the least burdensome of the identified regulatory options to the extent necessary to mitigate the unreasonable risk. The statute also makes clear that the Agency may select a combination of the options, and may limit the geographic application of a rule under TSCA section 6(a).

In promulgating any rule under TSCA section 6(a), TSCA section 6(c) requires the Agency to publish a statement addressing:

1. The effect of the chemical substance being regulated on health and the magnitude of exposure of humans to the substance.

2. The effects of such substance on the environment and the magnitude of exposure of the environment to the substance.

3. The benefits of such substance for various uses and the availability of substitutes for such uses.

4. The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

TSCA section 6(c) also provides that if the Administrator determines that the risk of injury to health or the environment could be eliminated or reduced to a sufficient extent through actions taken under another statute administered by EPA, she may not promulgate a rule under TSCA section 6 unless the Administrator finds, in her discretion, that it is in the public interest to protect against such risk under TSCA. In making this finding, the Administrator must consider all relevant aspects of the risk; a comparison of the estimated costs of complying with actions taken under TSCA and any other statute that adequately addresses the risk; and the relative efficiency of actions under TSCA and such other statute to address the risk.

Any rulemaking under TSCA section 6 includes the opportunity for any interested person to request an informal hearing. Such hearings could be limited to the right to present an oral statement, or could include the right to present and cross-examine witnesses if the Administrator determines that there are disputed issues of material fact necessary to be resolved and that cross-examination of witnesses is both appropriate and required for full and true disclosure with respect to such issues.

B. How Would EPA Apply TSCA Section 6 to Risks Associated with MTBE?

As discussed earlier, the use of MTBE as an additive in gasoline has resulted, and if unchanged is likely to continue to result, in the widespread release of MTBE into the environment; MTBE is difficult to contain and prevent from reaching sources of drinking water once it is released into the environment; and it has the potential to render drinking water unpotable at low levels and unsafe at higher levels. EPA's review of existing information on contamination of drinking water resources by MTBE indicates substantial evidence of a significant risk to the nation's drinking water supply. A comprehensive

approach to such risk must include consideration of either reducing or eliminating the use of MTBE as a gasoline additive. As a result, EPA is initiating this process pursuant to the unreasonable risk provision under TSCA section 6 to eliminate or greatly reduce the use of MTBE as a gasoline additive. EPA is interested in comments on both the risk and these possible responses to it. In accordance with the requirements of TSCA section 6, EPA will consider whether there are other appropriate mechanisms to address the problems presented by the use of MTBE as a gasoline additive. Thus, the outcome of this rulemaking could be a total ban on the use of MTBE as a gasoline additive. Consistent with TSCA section 6, EPA will carefully consider regulatory alternatives to a ban. These could include limiting the amount of MTBE that could be used in gasoline, limiting use of MTBE in particular geographic areas or during particular times of year; limiting the types of facilities in which MTBE can be stored; limiting the manner in which MTBE is transported; etc. Any final outcome must, however, provide adequate protection against any unreasonable risk associated with MTBE.

As part of a rulemaking under TSCA section 6, the Agency must also consider whether action under another statute administered by EPA, such as the CAA, RCRA, CWA, or SDWA, could effectively address the risks posed by MTBE and, if so, whether it is in the public interest to regulate the risk under TSCA instead of such other statute. It is worth noting in this regard that although a number of Agency programs could address some of the risks posed by MTBE (such as, for example, the regulation of USTs under RCRA), TSCA appears to provide the best tool for assessing and addressing the risks posed by MTBE.

As part of the consideration of other programs and identification of the least burdensome mechanism to provide adequate protection against the risks of MTBE, the Agency expects to consider a number of possible strategies for mitigating those risks, including preventing MTBE in gasoline from getting into groundwater, cleaning up water contaminated with MTBE, and removing MTBE from gasoline in whole or in part. While the Agency's assessment in this regard is preliminary at this point, the available evidence suggests that dealing with the problem before MTBE is added to gasoline may be the best solution for mitigating any unreasonable risks associated with MTBE. Given the large quantities of gasoline that are used and transported in the United States, and the number of different possible avenues for release into the environment (including leaks from storage tanks and pipelines; spills resulting from loading/unloading gasoline at tanks, gasoline pumps, or pipelines; spills resulting from transportation accidents; un-combusted gasoline from boat engines; emissions from automobile exhaust), it may not be practicable to prevent significant quantities of MTBE from getting into surface water or groundwater once the chemical is added to gasoline. Similarly, given the importance of groundwater as a drinking water source in the United States and the large number of wells and groundwater sources that have been and could be contaminated with MTBE and the costs and difficulties of cleaning contaminated drinking water sources, a risk-mitigation strategy centering on cleaning up water may not be the preferred strategy under TSCA section 6 for mitigating any unreasonable risks associated with MTBE. Consequently, EPA believes that a comprehensive approach must include consideration of either reducing or eliminating the use of MTBE as a gasoline additive.

In conducting this rulemaking under TSCA section 6, the Agency will also consider the costs and impacts of alternatives to MTBE. In oxygenated gasoline programs like Federal RFG, the most likely substitute based on current usage is ethanol. Other ether compounds are currently used as oxygenates in small quantities. MTBE does not occupy as dominant a position as an octane enhancer for conventional gasoline as it does as an oxygenate in RFG. Ethanol, alkylates, and aromatics are alternative octane enhancers in conventional gasoline. Although EPA is seeking more information on alternatives to MTBE, EPA does not expect ethanol, alkylates, or aromatics to present the same magnitude of risk to drinking water supplies as MTBE. Ethanol biodegrades more quickly than MTBE, and therefore is less likely to contaminate drinking water as often as MTBE, or at the levels of MTBE. Alkylates and aromatics are expected to behave in soil and water more like other components typically found in gasoline than MTBE; they too would be unlikely to contaminate drinking water as often as MTBE or at the levels of MTBE. Other ether compounds are not currently used widely as oxygenates, and the Agency does not have much data to characterize the risks they might pose to drinking water supplies. However, they are chemically similar to MTBE, and they may well move through soil and water in ways and amounts similar to MTBE. EPA will closely evaluate the likelihood that compounds not currently used in significant quantities as oxygenates in RFG might be widely used as alternatives to MTBE, whether additional information on these compounds is necessary, and whether other measures are appropriate to assure that an elimination or limitation of MTBE in gasoline does not result in the use of alternatives that might cause similar risks to drinking water. It appears that eliminating or limiting the use of MTBE as a fuel additive will result in increased costs in producing gasoline of approximately $1.9 billion per year if the oxygen mandate remains in place.

V. Alternative Gasoline Additives to MTBE

In conducting a rulemaking under TSCA section 6, EPA must consider the alternatives to MTBE. If the use of MTBE as a fuel additive is limited or banned by EPA, refiners will have to look to other chemicals as substitutes. To meet the oxygenate requirements of RFG, ethanol and other ethers are the most likely alternatives, while ethanol, alkylates, and aromatics will most likely replace MTBE as an octane enhancer. This unit assesses these chemicals and their potential to replace MTBE in gasoline.

A. What Oxygenates Other Than MTBE Could be Used to Meet RFG Requirements?

If the use of MTBE is limited or banned and the CAA oxygenate requirement remains in place, refiners will have to use a substitute oxygenate to meet the RFG requirements. Ethanol and other ethers are the most likely oxygenate alternatives.

1. *Ethanol.* Ethanol is an oxygenate that is produced from agricultural products such as corn. Ethanol and MTBE have been the primary oxygenates used to meet the RFG oxygen content requirements because of their availability, blendability, and ability to deliver air quality benefits. Ethanol is currently the primary oxygenate in about 12.5% of RFG, and it is the main oxygenate in the Midwest RFG areas.

Despite its current use in RFG, ethanol is not yet manufactured in sufficient volume to meet total current national oxygenate demands. Current U.S. ethanol production capacity is estimated at 120,000 b/d (barrels per day), which is equivalent in oxygen content to approximately 230,000 b/d of MTBE. In order for ethanol alone to fulfill the nationwide oxygen requirement in all RFG and oxygenated

fuels areas, the Panel estimated that at least an additional 67,000 b/d of ethanol would be needed. Because of the higher oxygen content of ethanol, a smaller volume of ethanol (5.7%) needs to be added to a gallon of RFG to satisfy the CAA oxygen content requirement than MTBE (11% by volume).

This shortfall in ethanol supply could be fulfilled by a combination of increasing production capacity at existing facilities and by building new facilities. The ethanol industry estimates that the current expansion of existing ethanol-from-corn production facilities may increase production capacity by as much as 40,000 b/d. (Ref. 36) Additionally, the industry estimates that new ethanol production facilities currently being planned could provide another 25,000 b/d. Ethanol production from biomass processing is currently approximately 4,000 b/d. Thus, while there is an insufficient supply of ethanol to meet current oxygenate demand, the ethanol industry projects that future ethanol production should be able to adequately meet the oxygenate demand and replace MTBE given appropriate time. The Department of Agriculture (USDA) has concluded that ethanol can fully meet all oxygenate requirements within 4 years. (Ref. 37)

Refiners that currently use MTBE in meeting the oxygenate requirement would need to modify their operations to produce an appropriate blendstock to which ethanol can be added. Terminals, responsible for actually adding the ethanol to the gasoline, would also have to modify their facilities. For example, terminals would have to add storage facilities for ethanol. Due to these initial logistical concerns, refiners have stated that an immediate ban on MTBE could have a negative impact on the nation's fuel supply.

In addition to initial capital costs, use of ethanol as a replacement for MTBE would have several long term impacts on the price of gasoline. When added to gasoline, ethanol increases the Reid Vapor Pressure (RVP) of the gasoline by about 1.0 pound per square inch. RVP is a measure of the gasoline's volatility. An RVP increase results in an increase in emissions of VOCs from motor vehicles. To compensate for this increase, and to reduce the risk of VOCs evaporating into the air, refiners must blend ethanol gasoline with a low-RVP blendstock. This low-RVP blendstock is more expensive to produce or purchase.

In order to make RFG with MTBE, refiners blend MTBE into gasoline. After mixture, the RFG is transported to distribution terminals by pipeline. Since ethanol is soluble in water, which is commonly found in pipelines, and will separate from gasoline, ethanol is usually blended at the distribution terminal. Because ethanol is produced primarily in the Midwest, though, it must be transported to terminals by either an ethanol-only pipeline, rail, marine or truck shipping or some combination of these options. It is possible that greater transportation connections between ethanol producers and terminals will have to be developed. The USDA study indicates that given a 3 to 5 year transition period, there does not appear to be a transportation impediment to the use of ethanol as a substitute for MTBE. (Ref. 38)

Economic impacts are not likely to be shared equally among petroleum refiners/marketers. Each refinery processes different types of crude, supplies different mixes of products (e.g., some refineries do not manufacture any RFG), and use widely varying technologies. Areas of the country that rely heavily on MTBE as an oxygenate will experience a more pronounced economic effect in the event of an oxygenate replacement or removal (e.g., Texas, California, and Northeast RFG markets use MTBE, whereas the Chicago and Milwaukee RFG markets use ethanol). In addition, markets farthest from the Midwest may experience a greater effect due to increased transportation costs.

The economic impact of using ethanol as an alternative to MTBE will be reflected primarily in the price of gasoline. A 1999 study by the DOE concluded that a phased elimination of MTBE as an additive for oxygenation in RFG in 4 years would result in an increase in the price of RFG of between 2.4 cents per gallon and 3.9 cents per gallon. (Ref. 39) A California Energy Commission (CEC) study estimated that the price of gasoline in California would increase anywhere from 1.9 cents per gallon to 2.5 cents per gallon in the long term (6 years) if ethanol was substituted for MTBE. (Ref. 40) A Chevron/Tosco analysis estimated that gasoline prices in California would increase 1.9 cents per gallon in the long term (6 years) if ethanol was substituted for MTBE. (Ref. 41)

Pure ethanol is highly soluble in water, and hypothetically should travel in groundwater at about the same rate as MTBE. Ethanol is not expected to persist in groundwater, though, because it biodegrades easily. Thus, ethanol itself does not appear to pose as great a danger to groundwater supplies as MTBE.

Ethanol's ability to biodegrade does present another potential issue of concern. Laboratory data and hypothetical modeling indicate that based on physical, chemical, and biological properties, ethanol will likely preferentially biodegrade in groundwater compared with other gasoline components. As a result, the levels of BTEX in water may decline more slowly, and BTEX plumes may extend further than they would without ethanol present. However, BTEX does not migrate as quickly as MTBE. Thus, even with the presence of ethanol, BTEX plumes would not be expected to travel as far as MTBE plumes. Although there are limited data regarding the movement of ethanol and BTEX, a recent USGS report cites several examples of MTBE plumes migrating further than BTEX plumes. (Ref. 42) At some sites, MTBE has migrated much further than other common gasoline components and those long travel distances increase the probability that MTBE will be detected in a drinking water well and that treatment may be required.

The health effects of ingested ethanol have been extensively investigated. Given that ethanol is formed naturally in the body at low levels, inhalation exposure to ethanol at the low levels that human are likely to be exposed are generally not expected to result in adverse health effects. (Ref. 43) Ingestion of ethanol in relatively large quantities, increases the risks for several forms of human cancer. (Ref. 44) However, it is highly unlikely that the public will be exposed to large quantities of ethanol from drinking water contamination.

When used as an oxygenate, ethanol blends of RFG achieve all Phase I goals of the RFG program. Ethanol is the primary oxygenate in Chicago and Milwaukee, and those areas have easily exceeded all Phase I performance requirements for VOCs, NO_X and air toxics. Thus, use of ethanol as an oxygenate nationwide would not appear to compromise compliance with air quality requirements; refiners seem able to produce RFG using ethanol that complies with RFG emissions standards. The Panel did note, however, that Chicago and Milwaukee, while exceeding the Phase I requirements, do not appear to achieve as great a reduction in air toxics as do other RFG areas. It is unclear whether MTBE is responsible for this greater reduction in air toxics or other aspects of the formulation. Starting in the year 2000, all RFG areas will be subject to more stringent standards for VOC, NO_X and toxics reductions, regardless of which oxygenate is used.

2. *Other ethers.* A variety of other ethers (ETBE, DIPE, TAME) are

currently used in gasoline, though in limited quantities; these ethers provide approximately 5% of the oxygenate used in RFG. These other ethers have found only limited use because they are more expensive than MTBE. For example, greater volumes of ETBE and TAME are necessary to achieve the 2.0% weight standard compared to MTBE. Use of ETBE also requires large quantities of ethanol as feedstock. Production supplies of other ethers are also limited. The current production capacity in this country of TAME is approximately 23,000 b/d. Increasing ETBE production would require refitting MTBE plants, primarily in the Gulf South. Transportation issues could be similar to those involving increased use of ethanol. CEC estimates that gasoline prices will increase 2.4 cents per gallon if ETBE is used to replace MTBE. (Ref. 45) This estimate is specific to California.

Given their similarity to MTBE, other ethers are likely to display similar chemical properties—high solubility in groundwater, poor sorption in soil, and slower biodegradation compared to BTEX. MTBE has become a concern in large part because of its chemical properties. MTBE can travel farther than other gasoline constituents and can create larger contamination plumes, making it more likely to impact drinking water supplies. Other ethers are likely to demonstrate the same properties and thus could well raise similar water contamination concerns as MTBE. No studies have been reported on the carcinogenicity of ETBE, TAME, or TBA.

B. What Compounds Other Than MTBE Could be Added to Gasoline to Boost Octane?

In addition to its use as an oxygenate, MTBE is also used as an octane enhancer in conventional gasoline. However, while MTBE is the dominant oxygenate additive in RFG, it is not the predominant octane enhancing additive in conventional gasoline. More conventional gasoline contains ethanol as an octane enhancer than contains MTBE for that purpose. In 1997, approximately 12,000 b/d of MTBE were used for octane enhancement purposes. If MTBE is banned or its use as an octane enhancer is limited, refineries will have to look to other alternatives to replace this source of octane. There are a limited number of octane-rich components that refiners can choose to produce needed octane. Ethanol, alkylates, and aromatics are the three most likely available alternatives to MTBE for use as an octane enhancer in conventional gasoline. Ethanol as an additive is discussed in Unit V.A.1.

1. *Alkylates.* Alkylates are a mix of high octane, low vapor pressure compounds that are produced from crude oil through a catalytic cracking process. Because of their desirable properties, alkylates are popular components for use in gasoline.

In order for a refiner to use alkylates as an octane enhancer, the refiner must possess an alkylation unit. According to an industry estimate, an alkylation unit can cost up to $80 million for a refinery that produces 10,000 b/d of alkylate. (Ref. 46) Refiners that do not currently use alkylates would have to make a substantial initial capital investment in order to do so. In addition, refiners would need to adjust other component streams to accommodate the change in vapor pressure characteristics associated with a fuel containing high alkylate content.

Supply of alkylates could be a key economic consideration. There are currently not enough domestic alkylates available to make up for the loss in MTBE volume. While increasing alkylate production is possible, it appears that refiners in California have limited possibilities for such an increase. Alkylate production on the East Coast and Gulf Coast also appears to be close to capacity. Given this situation, it may take refiners some number of years to modify facilities to produce enough alkylates to replace the octane enhancement currently provided by MTBE.

It is unclear, however, how much alkylate is needed to replace MTBE as an octane enhancer. Only 12,000 b/d of MTBE are currently used for octane enhancement in conventional gasoline. MTBE has a higher octane value than alkylates, and a simple linear comparison of these values would conclude that 14,350 b/d of alkylates would be necessary to replace MTBE. This linear comparison would not take into account several factors important in determining the amount of alkylates used, such as the blend of gasoline. Refineries can be expected to react in different ways to these factors to maximize production and economic feasibility and to meet performance standards.

Alkylates are less soluble in water, and they will not likely pose the same degree of risks to water resources as MTBE. Alkylates would be expected to behave more like other components of gasoline (BTEX) than like MTBE if released into the environment. Alkylates thus do not appear to pose a significant threat to drinking water resources.

According to NESCAUM, increased use of alkylates in gasoline blends will not increase toxic emissions. (Ref. 47) However, the available human and aquatic toxicity data on alkylates are limited.

2. *Aromatics.* Aromatics are hydrocarbons which can include benzene, toluene, and xylene. Toluene is the primary aromatic used for octane enhancing. NESCAUM estimates that current toluene production capacity may be sufficient to produce enough toluene to replace MTBE by volume. (Ref. 48) The aromatics are significantly less likely to end up in drinking water sources in significant quantities after release to the environment than is MTBE.

Aromatics contain compounds that are known to have a range of potential human health effects. Benzene is a known human carcinogen, and xylene is a major contributor to smog. Toluene is associated with some toxic by-products, though it is less toxic than benzene.

VI. Specific Requests for Comment, Data, and Information

Interested persons are invited to comment on any issue raised in this ANPRM. The Agency is particularly interested in receiving additional information and/or comments addressing the following issues:

A. EPA Action

As explained in this ANPRM, EPA is initiating this process pursuant to TSCA section 6 to consider eliminating or limiting the use of MTBE in gasoline. EPA requests comment (including comments addressing the health, environmental, and/or cost implications) on:

1. Whether some use of MTBE as a gasoline additive should be allowed to continue and, if so, the level or type of use that should be allowed to continue?

2. How much lead time, if any, would be necessary to enable refiners to eliminate MTBE from RFG while continuing to meet the current levels of compliance with RFG standards for VOC, NO_X, and toxic emissions without unacceptable impacts on the price or supply of fuel?

3. How much lead time, if any, would be necessary to enable refiners to eliminate MTBE as an octane enhancer in conventional gasoline without unacceptable impacts on the price or supply of fuel?

4. Whether EPA should obtain additional information on, or reduce, eliminate, or cap the use of any other gasoline additives in addition to MTBE?

5. Whether MTBE presents significantly greater risk to public health

and/or water quality than alternative gasoline additives.

B. Releases of Gasoline Containing MTBE, Contamination of Water Resource by MTBE, and Remediation Technologies

1. As explained in this ANPRM, the Agency identified numerous and widespread instances of MTBE contamination of groundwater. In order to ensure that EPA has the most recent and accurate data available, EPA requests information regarding incidents of both releases of gasoline containing MTBE and the detection of MTBE in groundwater, surface waters, or drinking water supplies. Comments should include, to the extent possible, the amounts, locations, sources, and types of MTBE releases, and the levels and sources of water resource contamination from MTBE.

2. EPA is interested in additional information concerning the toxicity of MTBE, the levels at which its taste or odor can be detected in water, the levels at which its taste or odor makes water unacceptable to consumers, and any other properties of MTBE that may be relevant to a rulemaking under TSCA section 6.

3. EPA's summary of current MTBE contamination problems suggests that there is significant risk of additional future contamination of water resources by MTBE from gasoline. In order to more comprehensively characterize this risk EPA is requesting comment regarding the likely future occurrence of MTBE contamination in groundwater, surface water, and/or drinking water.

4. EPA is requesting information regarding the relative contribution of different sources (such as USTs, spills, storm water runoff, air deposition, and marine engines) to present and future MTBE contamination of groundwater, surface water, and drinking water.

5. EPA is requesting information regarding the cost and efficacy of technologies for remediating soil and drinking water sources that have been contaminated with MTBE. EPA is particularly interested in examples of remediation efforts that have addressed MTBE contamination, and cost and efficacy comparisons with remediation efforts for other components of gasoline (such as BTEX).

C. Alternatives to MTBE

1. EPA is requesting information on potential substitutes, including those not identified in this ANPRM, that might replace MTBE either as an oxygenate in RFG or an octane enhancer in conventional gasoline. In addition to identifying a potential substitute, any information addressing the following would be helpful:

a. The basis for the belief that the substitute might replace MTBE in significant quantities.

b. The behavior of the substitute in soil and water, with an emphasis on the quantities of the substitute that might find their way into drinking water sources if the substitute is added to gasoline.

c. Toxicity, taste or odor properties, current exposure levels, or any other properties or considerations of the substitute that may be relevant to a rulemaking under TSCA section 6.

2. EPA is interested in information based on actual releases of oxygenates and other gasoline additives other than MTBE to the environment; including degree of contamination, the spread of any contaminant plumes, and the cost and efficacy of the technologies available to remediate such contamination. Comments should include, to the extent possible, the amounts, locations, sources and types of releases, and the levels and sources of water resource contamination from these oxygenates and additives, as well as from other gasoline constitutents.

3. EPA is interested in information regarding any possible impacts on health or the environment that might result from the elimination or limitation of use of MTBE as a gasoline additive and the use of alternative compounds in MTBE's place, including not only whether alternative additives may have a greater or lesser impact than MTBE on drinking water sources, but also whether increased use of such alternatives might have other beneficial or negative consequences on human health or the environment (such as air quality or water quality impacts).

D. Economic Considerations

1. EPA is requesting comment on the cost impacts of an elimination or limitation of MTBE in gasoline, in the absence of a change in the RFG requirements. EPA is particularly interested in comments that address:

a. The cost implications of an immediate elimination of MTBE from gasoline nationwide.

b. The cost implications of an immediate nationwide limit on MTBE content in gasoline to pre-RFG levels or levels generally associated with the use of MTBE for purposes of octane enhancement.

c. The cost implications of a phase out of MTBE from gasoline nationwide, resulting in complete elimination in a period of 3 to 4 years or 5 to 6 years.

d. The cost implications of a nationwide phase down of MTBE content in gasoline, over 3 to 4 years, resulting in a limit on MTBE content equivalent to pre-RFG levels or levels generally associated with the use of MTBE for purposes of octane enhancement.

2. EPA is requesting comment regarding any information that was not considered by the Blue Ribbon Panel on the availability of alternative oxygenates and octane enhancers, the time it would take for production of alternatives to meet national demand, and the potential impacts on fuel supply and price.

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VIII. Regulatory Assessment Requirements

A. Executive Order 12866

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

1. Have an annual effect on the economy of $100 million or more, or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

2. Creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency;

3. Materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

A draft of this ANPRM was reviewed by OMB prior to publication, as required by E.O. 12866. Any changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Federalism

Executive Order 13132, entitled ''*Federalism*'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified unit of the preamble to the rule, a federalism summary impact statement. The federalism summary impact statement must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

EPA has determined that the requirements of Executive Order 13132 do not apply to this ANPRM, and therefore the Executive Order does not apply to this ANPRM.

C. Small Business Concerns

Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Public Law 104–121, requires the Administrator to assess the economic impact of proposed rules on small entities, including small businesses. The Agency accordingly requests comment on the potential economic impact on small business of the limitation or elimination of MTBE as an oxygenate or octane enhancer in gasoline. EPA does not anticipate, at this point, that the potential action discussed in this ANPRM will have a significant economic impact on small business. Comments on the potential economic impact of such an action on small businesses will help the Agency meet its obligations under the RFA, as amended by SBREFA, and will provide information to assist the Agency in its efforts to minimize any significant economic impact of such an action for potentially affected small businesses.

D. Children's Health Protection

Executive Order 13045, entitled ''*Protection of Children from Environmental Health Risks and Safety Risks*'' (62 FR 19885, April 23, 1997) applies to any rule that:

1. Is determined to be ''economically significant'' as defined under E.O. 12866.

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.

While E.O. 13045 does not require EPA to evaluate the health or safety risks of actions discussed in an ANPRM, the Agency is, nonetheless, soliciting comment on such risks. The potential action discussed in this ANPRM might involve issues related to health or safety risks. To the extent that this is the case, the potential action would be intended to minimize or eliminate any such risks for all people who utilize groundwater resources, including children. We request comment on whether there are health or safety considerations related to the potential action discussed in this ANPRM that may disproportionately affect children.

List of Subjects in 40 CFR Part 755

Environmental protection, Air pollution, Fuel additives, Hazardous substances, Water resources.

Dated: March 20, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–7323 Filed 3–21–00; 2:11 pm]

BILLING CODE 6560–50–F

Federal Register

Friday,
March 24, 2000

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Removal of the Prohibition Against Certain Flights Within the Territory and Airspace of Serbia-Montenegro; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 29508; Special Federal Aviation Regulation (SFAR) No. 84]

Removal of the Prohibition Against Certain Flights Within the Territory and Airspace of Serbia-Montenegro

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; removal.

SUMMARY: This action removes Special Federal Aviation Regulation (SFAR) No. 84, which prohibit flight operations within the territory and airspace of Serbia-Montenegro by any United States air carrier or commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA except persons operating U.S.-registered aircraft for foreign air carriers, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action is taken because the North Atlantic Treaty Organization (NATO) has ceased air strikes against Serb forces in Serbia-Montenegro, which has reduced the threat of hostile actions against persons and aircraft engaged in flight operations within the airspace of Serbia-Montenegro.

EFFECTIVE DATE: March 24, 2000.

FOR FURTHER INFORMATION CONTACT: David Catey, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591. Telephone: (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Availability of This Action

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access. gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW, Wasington, DC 20591, or by calling (202) 267–9680. Communications must identify the docket number of this action.

Persons interested in being placed on the mailing list for future rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at http://www.faa.gov/avr/arm/sbrefa.htm and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.gov.

Background

From March 21, 1999, through June 10, 1999, NATO conducted air strikes against Serb military forces in Serbia-Montenegro. As a result, the FAA determined that the potential for hostile action against U.S. civil aircraft operating over the territory of Serbia-Montenegro warranted a prohibition of flight in that region. Accordingly, in exercising its statutory safety authority, the FAA issued a final rule prohibiting certain U.S. civil aircraft operations within the territory and airspace of Serbia-Montenegro. SFAR No. 84 prohibits flight operations within the territory and airspace of Serbia-Montenegro by any United States air carrier or commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier.

Following the cessation of NATO air strikes on June 10, 1999, there has been a reduction in tensions. As a result, the FAA has determined that the risk of hostile military action against civil aircraft by armed elements in Serbia-Montenegro no longer exists. The FAA has determined that the territory of Serbia-Montenegro can be safely overflown by civil aircraft.

Regulatory Analyses

The FAA has determined that this action is not a ''significant regulatory action'' under Executive Order 12866, nor is it considered a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because this amendment removes a restriction that is no longer warranted, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. The FAA also certifies that this rule 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.

Therefore, on the basis of the foregoing information, I have determined that the immediate removal of SFAR 84 from 14 CFR Part 91 is appropriate. The Department of State has been advised of, and has no objection to, this action.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Serbia-Montenegro.

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends Part 91 of chapter I of title 14, of the Code of Federal Regulations by removing SFAR 84 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506, 46507–47122, 47508, 47528–47531.

PART 91 [AMENDED]

2. Special Federal Aviation Regulation No. 84 is removed.

Issued in Washington, DC, on March 21, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–7340 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Friday,
March 24, 2000

Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
Special Visual Flight Rules; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2000–7110; Amdt; No. 91–262]

RIN 2120–AG94

Special Visual Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the language regarding aircraft operating in accordance with Special Visual Flight Rules (SVFR). Specifically, this action will permit a general aviation pilot at a satellite airport where weather reporting is not available, to depart in meteorological conditions less than basic Visual Flight Rules (VFR) weather minimums provided that the pilot determines that he has the requisite flight visibility. The FAA is taking this action to reduce the number of unnecessary flight delays being faced by general aviation aircraft while providing an equivalent level of safety.

DATES: Effective May 23, 2000.

Comments must be received by April 24, 2000.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to: United States Department of Transportation Dockets, Docket No. FAA–2000–7110, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: http://dms.dot.gov/. Commenters who wish to file comments electronically should follow the instruction on the DMS web site.

FOR FURTHER INFORMATION CONTACT: Avis P. Person, Airspace and Rules Division (ATA–400), Air Traffic Airspace Management Program, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments; therefore, the FAA is issuing it as a direct final rule. The amendment was recommended by the Aviation Rulemaking Advisory Committee (ARAC) with no dissenting opinions. In addition, the FAA believes that the amendment will be well received by the public.

Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received on this direct final rule within the comment period, the regulation will become effective on the date specified. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective.

If the FAA does received, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking (NPRM) may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by an NPRM, comments are invited on this document. Interested persons are invited to participate in this action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public comment contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. [FAA–2000–7110].'' The postcard will be date stamped and mailed to the commenter.

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone (703) 321–3339), the Government Printing Office's electronic bulletin board service (telephone (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Government Printing Office's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents. This direct final rule also may be accessed on the DMS at the electronic address listed in the **ADDRESSES** section above.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number of docket number of this final rule.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statues and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA in the ''Quick Jump'' section of the FAA's web page at http://www.faa.gov/avr/arm/sbrefa.htm and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.gov.

Background

The current language of §§ 91.155 and 91.157 have causes confusion as to the application of VFR weather minimums in controlled airspace at satellite airports, and prompted numerous inquiries and requests for clarification. In particular, concerns have been raised as to whether the ceiling at a satellite airport can be determined by a pilot on the ground in takeoff position.

On January 9, 1995, the FAA requested that the Aviation Rulemaking Advisory Committee on Air Traffic Issues (ARAC) review §§ 91.155 and 91.157 and recommend language that would be more easily understood by the aviation community. In response, the ARAC established a working group composed of representatives from the

Air Traffic Control Association, Inc. (ATCA), the Aircraft Owners and Pilots Association (AOPA), the Experimental Aircraft Association (EAA), the Helicopter Association International (HAI), and the National Business Aviation Association (NBAA) to review this matter. As a result of this review of §§ 91.155 and 91.157, the working group concluded that misunderstandings occur when applying the visibility minimums on the ground for SVFR operations from a satellite airport. The ARAC recommended that the FAA resolve the problem by permitting part 91 general aviation pilots in takeoff position to determine whether visibility minimums exist for SVFR departure at satellite airports when weather reporting is not available at the satellite airport.

A satellite airport, is an airport that exists within the same airspace area as the primary airport that determines the airspace designation. SVFR operations are aircraft operating in accordance with clearances within controlled airspace in meteorological conditions less than the basic VFR weather minimums.

Under current rules, an SVFR clearance must be requested and approved by the nearest air traffic control (ATC) facility to operate within a Class B, C, D, or E surface area when the weather does not meet VFR flight weather minimums. This clearance allows operations below 10,000 feet mean sea level (MSL) within the lateral boundaries of a controlled airspace surface area, with limited exceptions, provided the following conditions are satisfied: (1) the pilot receives a clearance from ATC; (2) the pilot remains clear of clouds; (3) SVFR operations are conducted only between sunrise and sunset; and (4) the ground visibility report indicates that at least 1 statute mile of visibility exists. If ground visibility is not reported, flight visibility must be determined to be at least 1 statute mile.

Ground visibility is defined in 14 CFR section 1.1 as the ''prevailing horizontal visibility near the Earth's surface as reported by the United States Weather Service or an accredited observer.'' Because ground visibility is considered an official report, pilots and air traffic controllers are more likely to rely on a ground visibility report than a flight visibility report which is reported by a pilot. But in the absence of a ground visibility report, § 91.157(c)(2) currently allows a pilot departing under SVFR to rely on a flight visibility report, which may have been reported by a pilot in flight who is not required to be an official weather observer. Flight visibility is also defined in 14 CFR section 1.1 and must be determined by a pilot from the cockpit while an aircraft is airborne. The current rules do not permit flight visibility to be determined by a pilot on the ground.

Discussion of the Recommendation

The ARAC working group recommended that the FAA permit those general aviation pilots operating in accordance with part 91 to determine whether visibility minimums exist for SVFR departure at satellite airports when weather reporting capabilities do not exist at the satellite airport. The working group rationale is that there is little difference between a pilot's ability to determine visibility in flight versus on the ground.

The FAA has reviewed and accepted the ARAC recommendation. Thus, the FAA is amending § 91.157 to allow pilots to determined if visibility minimums exist on the ground for SVFR departure provided the following conditions are satisfied: 1) the flight is conducted under part 91; and 2) the airport at which the aircraft is located is a satellite airport that does not have weather reporting capabilities. The pilot's visibility determination on the ground for SVFR departure is not an official ground visibility report since the pilot's report is not equivalent to that of an official weather observer. Consequently, the rule expands the term ''flight visibility'' as opposed to 'ground visibility'' but limits that expansion to SVFR departure under § 91.157.

This action is intended to reduce unnecessary delays for part 91 operations and clarify the appropriate means of determining visibility minimums for SVFR departure from satellite airports when that airport does not have weather reporting capabilities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction of 1995 (44 U.S.C. 3507(d), there are no requirements for information collection associated with this rule.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Authorities regulations, where they exist, and has identified no differences in these proposed amendments and the foreign regulations.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this direct final rule: (1) will generate benefits that justify its costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandates. These analyses are presented here in the preamble.

This direct final rule allows pilots who are on the ground (in controlled air space at satellite airports) to determine whether visibility conditions meet or exceed the minimums necessary to allow flight departure under special visual flight rules (SVFR) when these satellite airports do not have weather reporting capabilities. Previously, if satellite airports were experiencing weather conditions that would have permitted takeoff under SVFR, but the weather at the primary airport was not favorable, the pilot was required to delay departure until either the weather conditions improved at the primary airport or the pilot received a flight visibility report indicating at least 1 statute mile of visibility. This direct final rule will clarify the language regarding departure under SVFR and reduce the number of unnecessary flight delays while providing an equivalent level of safety.

The direct final rule is expected to impose no costs on the FAA or airspace users since no additional resources will be needed to implement this rule. In fact, the direct final rule may reduce the unnecessary number of flight delays, however, information is not available to calculate this number. The FAA contends that safety will not be adversely affected as a result of this rulemaking.

In view of the fact that this direct final rule will result in potential cost-savings, while maintaining an equivalent level of safety, the FAA has determined that his direct final rule will be cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has conducted the required review of this direct final rule and has determined that it will impose no costs on the FAA or airspace users, and therefore, will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this direct final rule will not have a significant impact on a substantial number of small entities. However, the FAA solicits comments from the public regarding this determination of no significant impact.

International Trade Impact Assessment

The provisions of this rule will have little impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Federalism Implications

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. It has determined that this action 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 the various levels of government. Therefore, the FAA has determined that this direct final rule does not have federalism implications.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, mut provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This direct final rule does not contain any Federal intergovernmental or private sector mandate that exceeds $100 million a year.

Agency Findings

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under section 3(F) of Executive Order 12866 and, therefore, its not subject to review by the Office of Management and Budget; (2) is not a ''significant rule'' under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979; and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 91

Air Traffic Control, Aircraft, Airplanes, Airports, Airspace, Weather.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 91 of Title 14, Code of Federal Regulations as follows:

PART 91—AIR TRAFFIC AND GENERAL OPERATING RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120. 44101, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506, 47122, 47508, and 47528–47531.

2. Section 91.157(c)(2) is revised and paragraph (d) is added to read as follows:

§ 91.157 Special VFR weather minimums.

* * * * *

(c) * * *

(2) If ground visibility is not reported, unless flight visibility is at least 1 statute mile. For the purposes of this paragraph, the term flight visibility includes the visibility from the cockpit of an aircraft in takeoff position if:

(i) The flight is conducted under this part 91; and

(ii) The airport at which the aircraft is located is a satellite airport that does not have weather reporting capabilities.

(d) The determination of visibility by a pilot in accordance with paragraph (c)(2) of this section is not an official weather report or an official ground visibility report.

Issued in Washington, DC on March 21, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–7341 Filed 3–23–00; 8:45 a.m.]

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S. 376/P.L. 106–180

Open-market Reorganization for the Betterment of International Telecommunications Act (Mar. 17, 2000; 114 Stat. 48)

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